

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION

INNOVATION SCIENCES, LLC : DOCKET NO. 4:18CV474  
:  
VS. : SHERMAN, TEXAS  
:  
AMAZON.COM, INC., ET AL : SEPTEMBER 2, 2020  
:  
8:25 A.M.

TRANSCRIPT OF TRIAL  
BEFORE THE HONORABLE AMOS L. MAZZANT,  
UNITED STATES DISTRICT JUDGE, AND A JURY

APPEARANCES:

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PROCEEDINGS REPORTED BY MECHANICAL STENOGRAPHY, TRANSCRIPT  
PRODUCED BY COMPUTER-AIDED TRANSCRIPTION.

1 (Open court. All parties present.)

2 (Jury not present.)

3 THE COURT: Please be seated.

4 And, Mr. Jackson or Mr. Krauss, if you want to  
5 address -- I know that y'all raised one issue on the charge,  
6 before I bring the --

7 You can start bringing the jury down, but don't bring  
8 them in yet.

9 MR. KRAUSS: Yes, Your Honor. It's on the  
10 ineligibility charge. And I understand that Your Honor made a  
11 change this morning, but I'm going to suggest that that just  
12 causes additional confusion. I believe the way it's currently  
13 worded is to succeed on its claims for invalidity as it relates  
14 to ineligibility, Amazon must show.

15 And --

16 THE COURT: Okay. Well, what are you suggesting?

17 MR. KRAUSS: That we just change -- from the version  
18 that was last night, just change the word "invalidity" to  
19 "ineligibility."

20 The problem with the way it is now is that, as you  
21 know, Your Honor, the verdict form says that ineligibility  
22 and invalidity, that question, they're unrelated. And they  
23 are, because ineligibility is 101 and invalidity is 102,  
24 103. They're completely different parts of the statute.  
25 And I think this just causes confusion, especially in light

1 of what was agreed to on the verdict form.

2 MS. SHAMILOV: Good morning, Your Honor.

3 THE COURT: Good morning.

4 MS. SHAMILOV: The defense of invalidity absolutely  
5 includes it can be based on 101, and it is based on this -- in  
6 this case. There is no confusion with the verdict form. The  
7 verdict form says what it says, and it is a defense of  
8 invalidity for us as it relates to patent eligibility. That is  
9 a correct statement.

10 THE COURT: I'm not sure why you -- don't understand  
11 why you think it's confusing, considering that the verdict  
12 separates this kind of invalidity from Question 2, which goes  
13 to everything else.

14 MR. KRAUSS: Well, they're completely different  
15 concepts and just changing the word "invalidity" to  
16 "ineligibility" I think would be the cleaner and easier fix,  
17 Your Honor, from the version last night.

18 MS. SHAMILOV: But it is our defense of invalidity,  
19 Your Honor, so --

20 THE COURT: I mean, you agree it's a -- it is a  
21 defense of invalidity.

22 MR. KRAUSS: Well, it's a defense of ineligible  
23 subject matter.

24 MS. SHAMILOV: Which results in an invalid patent.  
25 It's a defense of invalidity.

1 MR. KRAUSS: Which does not go to the jury, as we  
2 discussed.

3 THE COURT: Well, this one is unique because they  
4 don't get the full question. They only answer a part of it.

5 Okay. I'll go ahead for purposes -- to make sure  
6 there's not any confusion, I'll go ahead and change that to  
7 proceed on its claim for patent -- and I'm going to say  
8 patent ineligibility, Amazon must prove. Okay?

9 MR. KRAUSS: Thank you, Your Honor.

10 THE COURT: Any other -- any other issues with the  
11 charge, other than I know you all will have your objections to  
12 make and everything later. That's not --

13 MS. SHAMILOV: We have a list of exhibits we want to  
14 move in on the record.

15 THE COURT: Your mic's not on.

16 MS. SHAMILOV: Sorry, Your Honor. We have a list of  
17 exhibits we want to move in on the record. I don't know if you  
18 would like us to do it now or during the morning break.

19 THE COURT: Have y'all discussed that so there's no  
20 issues?

21 MS. SHAMILOV: We did. There are -- there are a  
22 couple of disputes that you will need to resolve. It's not  
23 final otherwise, Your Honor. But it's just, I think, two.

24 THE COURT: Why wouldn't there be any of this, you  
25 know?

1 MS. SHAMILOV: I'm sorry?

2 THE COURT: I said, why wouldn't there be any  
3 disputes here on the last day, so...

4 MS. SHAMILOV: Yeah. So, I think -- well, so,  
5 there's one exhibit that Innovation Sciences wants to move in,  
6 which is 970A -- PTX-970A, which is a printout from their  
7 damages expert report. It's an exhibit that their damages  
8 expert prepared. So, those are -- that's not evidence. It was  
9 demonstratives. They showed it.

10 We've operated this entire case with the expert reports  
11 and, you know, exhibits that experts prepared is not  
12 evidence and it doesn't go in. So, that is the PTX-970  
13 issue -- 970A issue.

14 THE COURT: Okay. I thought we were talking about  
15 your exhibits so...

16 MS. SHAMILOV: Oh, I'm sorry. Well, that was my  
17 objection. Our exhibit is -- that we would want to move in is  
18 1179, which is that -- you know, the box with the software of  
19 HAL.

20 THE COURT: Okay. Make sure -- I'm going to make  
21 sure, so, the first dispute is over which exhibit?

22 MS. SHAMILOV: 970A. That is PTX-970A that we object  
23 to. And the second dispute is --

24 THE COURT: Let's deal with -- let's deal with one at  
25 a time then, so...

1 MS. SHAMILOV: Sure.

2 MR. BERQUIST: Your Honor, Jay Berquist. May I  
3 respond?

4 THE COURT: Yes.

5 MR. BERQUIST: If -- Your Honor may recall that the  
6 sales information provided by Amazon came in electronic  
7 spreadsheets, which we have the electronic spreadsheets. And  
8 then we also printed, and I believe they are Exhibits 401 and  
9 401A, because they gave us an initial disclosure that is  
10 supplemental for additional months after the original.

11 So, what our expert did, because it's -- it's in a  
12 form, you might imagine, of electronic spreadsheet, it's not  
13 readily understandable. You would have to -- you would have  
14 to have a degree in accounting to work through it.

15 So, what our expert did in creating 970A is he went  
16 through for each of the product models -- the Fire TV, the  
17 Fire Tablet, and the Echo -- by month. He put down the  
18 summary of each of the sales for those products, totaling  
19 down by -- at the end -- at the end for those products. So,  
20 we -- we believe that it's a fair summary of the electronic  
21 information that's been provided.

22 MS. SHAMILOV: That's, at a minimum, hearsay, Your  
23 Honor. That is not our document. Our documents with that data  
24 are in. This is something their expert compiled. It's  
25 hearsay. It shouldn't be coming in as an exhibit. They showed

1 it as a demonstrative. They talked about it to clarify the  
2 data. They also showed the native files to the jury. The jury  
3 will have the native files.

4 MR. BERQUIST: We believe the foundation for what the  
5 information is -- and, Your Honor, it's simply to make the  
6 jury's life a little easier to understand what the sales are.

7 MS. SHAMILOV: There is a lot of documents that would  
8 make the jury's life easier that don't come in.

9 THE COURT: No, I understand. But, Ms. Shamilov,  
10 there's no -- you don't believe any of the information is  
11 recorded incorrectly?

12 MS. SHAMILOV: I actually do not know that, Your  
13 Honor. We've never sat down and cross-checked that  
14 demonstrative to the native spreadsheet. I don't know.

15 THE COURT: Well, can someone do that on your team?

16 MS. SHAMILOV: It is a very long spreadsheet. It  
17 will take time.

18 THE COURT: Okay. Well --

19 MS. SHAMILOV: We can do that, but I'm just --

20 THE COURT: I'll conditionally admit it, subject to  
21 making sure it's factually accurate so...

22 MR. BERQUIST: Thank you, Your Honor.

23 THE COURT: What's the next dispute?

24 MS. SHAMILOV: It's Defendant's Exhibit 1179. That's  
25 that HAL video -- the HAL box with the install CD in it. So,



1 that is evidence of the HAL system that goes in.

2 Now, I believe their objection is that on the install  
3 video with the program software itself, there's also that  
4 Oprah Winfrey video, which we agree is a demonstrative.

5 There is no way to separate that CD. We can't get into  
6 it. And the jury actually cannot open the CD because it  
7 won't work on any modern computer. So, for all intents and  
8 purposes, the Oprah video is -- they won't be able to see  
9 it. It doesn't go in.

10 We agree that the Oprah Winfrey video is a  
11 demonstrative. There's just no way to separate it from the  
12 actual HAL software that is -- you know, that is evidence  
13 and needs to go in.

14 MR. DAVIS: Your Honor, that's exactly the problem.  
15 So, as Your Honor remembers from Monday morning, I believe it  
16 is, the three videos from Mr. Shriver were allowed as  
17 demonstratives but not admitted. I have that right here.

18 Then yesterday Mr. Hadden, during his examination of  
19 Dr. Johnson, explicitly mentioned the box and said: And  
20 does that box also include the install CD with the video of  
21 the Oprah Winfrey TV show demonstrating the HAL system that  
22 we watched yesterday?

23 The video is -- is a demonstrative. It's not admitted.  
24 It should not be back there, regardless of whether or not  
25 the jurors may or may not be able to play it.

1 MS. SHAMILOV: Well, but the install CD is  
2 indisputably an exhibit and evidence that goes in. The issue  
3 is -- that counsel has is that the CD also has a demonstrative  
4 on it. It is physically impossible to separate those. It's  
5 just technologically impossible. And, so, the jurors won't be  
6 able to see it. It is -- it is also technologically impossible  
7 for them to open the CD.

8 But we agree -- we are in agreement that the Oprah  
9 Winfrey video is a demonstrative. It is not evidence. But  
10 that cannot mean that the actual install and software -- the  
11 software and the install CD of that software is not  
12 evidence, because it is, which is -- there is no way to  
13 separate those two.

14 MR. DAVIS: If there is no way to separate those two,  
15 then, you know, it's unfortunate for Amazon, but it should not  
16 go back.

17 MS. SHAMILOV: Your Honor --

18 MR. DAVIS: If it -- excuse me. The video was just a  
19 demonstrative, not admitted.

20 MS. SHAMILOV: Your Honor, this is highly prejudicial  
21 to not let an important piece of evidence go in when we know  
22 that the jury cannot even see the demonstratives. We are not  
23 putting the video in.

24 THE COURT: Well, you know, to be fair, I understand  
25 that. I mean, they can't play it but -- and it can't be

1 separated, but it is part of their case, so I'm going to admit  
2 it. I've already -- I've admitted it.

3 MS. SHAMILOV: Oh, I'm sorry. Thank you.

4 THE COURT: I know you were talking.

5 MS. SHAMILOV: Thank you, Your Honor. Appreciate it.

6 THE COURT: Anything else?

7 MS. SHAMILOV: That's it. There is just the list of  
8 the numbers that I can do at the break, just whichever way --

9 THE COURT: That's fine. Don't forget to do that.  
10 The jury is outside, so anything else? We have one more  
11 witness and then --

12 MR. KRAUSS: Did we discuss D73? That's the Shriver  
13 declaration that's subject to the motion in limine.

14 MS. SHAMILOV: Yeah. I don't think that's an issue.

15 MR. KRAUSS: Oh, you've agreed that's out? Thank  
16 you.

17 THE COURT: That was only for the purposes of the  
18 Court, not for the jury.

19 MS. SHAMILOV: Yes, Your Honor.

20 MR. KRAUSS: Thank you, Your Honor.

21 THE COURT: Okay. Everyone ready?

22 Okay. Let's go ahead and bring the jury in.

23 (Jury enters the courtroom, 8:38 a.m.)

24 THE COURT: Good morning, ladies and gentlemen.  
25 Welcome back.

1 And, Mr. Berquist, what's next?

2 MR. BERQUIST: Your Honor, Innovation recalls  
3 Dr. Devrim Ikizler to the stand, please.

4 THE COURT: Welcome back. And you understand you're  
5 still under oath? You understand you're still under oath?

6 THE WITNESS: Say it again.

7 THE COURT: You understand you're still under oath?  
8 We didn't swear you in again because we never released you  
9 fully, so --

10 THE WITNESS: Yes.

11 THE COURT: Okay. Very good. Go ahead.

12 DEVRIM IKIZLER,

13 DEVRIM IKIZLER, PLAINTIFF'S WITNESS, PREVIOUSLY SWORN,

14 DIRECT EXAMINATION

15 BY MR. BERQUIST:

16 Q Dr. Ikizler, thank you for returning from Austin for a  
17 second day for us, and a big thank you to your wife who let  
18 you come back, even though she is eight and a half months  
19 pregnant.

20 A Yes, sir. I'm going to have to hit a few stores on the  
21 way back, for sure.

22 Q I just have a few questions I would like to follow up  
23 with you on.

24 You were here in the courtroom yesterday when Dr. Ugone  
25 testified, were you not?

1 A Yes, I was.

2 Q And Dr. Ugone asserts that you overstated the product  
3 models in your damages model. How do you respond to that?

4 A So, there was one Echo Input product that he identified  
5 and then three Fire Tablet Kid models that were identified.  
6 And I spoke to Joe McAlexander and he testified yesterday in  
7 the court that the tablet models that are kid versions are  
8 not any different from the infringement standpoint than the  
9 other Fire Tablets. Therefore, it's my understanding that  
10 they are infringing, and that's his testimony. So, they  
11 should not be excluded from the damages analysis, whereas he  
12 testified yesterday that he didn't actually analyze Echo  
13 Input. So, for that reason I calculated the amount of  
14 damages that were attributable to Echo Input and I took them  
15 out of the damages numbers.

16 MR. DACUS: Your Honor, I'll need to object. This is  
17 outside of his report.

18 MR. BERQUIST: Your Honor, it just follows up on the  
19 testimony that's occurred in this case and, in fact, I believe  
20 it was Amazon that made the argument that these sales need to  
21 come out of his analysis.

22 THE COURT: Well, overruled.

23 MR. BERQUIST: Thank you.

24 BY MR. BERQUIST:

25 Q Were you finished, Dr. Ikizler?

1 A No. I was going to tell you how much damages was  
2 attributable to Echo Input.

3 So, I calculated that out of the sales. \$4.7 million  
4 worth of sales was attributable to Echo Input, and then that  
5 corresponds to -- with the two and a half percent royalty  
6 rate, \$120,000 of damages. So, initially damages was 100.8  
7 million. Now it's 100.7 million.

8 Q Let's -- let's change topic for a minute and talk about  
9 product feature apportionments. It dawned on me yesterday  
10 that we've heard Dr. Simonson's name a couple of times. It  
11 may not be clear who Dr. Simonson is in this case. Who is  
12 Dr. Simonson?

13 A Dr. Simonson is one of Amazon's experts that designed  
14 the survey in conjunction with this lawsuit and identified  
15 944 potential smart speaker buyers and interviewed them with  
16 a series of questions.

17 Q And did you -- do you understand whether or not  
18 Dr. Simonson testified in court in this matter?

19 A I understand that he couldn't travel for some reasons  
20 that I don't know.

21 Q Well, what information did you learn from the free form  
22 responses in Dr. Simonson's survey?

23 A So, I studied this survey -- by the way, this survey  
24 wasn't done when I filed -- when we filed our first report,  
25 which was in December. He conducted and -- he published his

1 results essentially in this court. He submitted them in  
2 January.

3 So, I reviewed his open form -- his questions, because  
4 this was a piece of data that we didn't have available, and  
5 he asked people specifically what product features do you  
6 care about before you buy a smart speaker. And remember,  
7 these are 944 people. For them to be eligible in this  
8 survey, they have to be considering to purchase a smart  
9 speaker, which is a very valuable piece of information to  
10 us.

11 So, I went through these 944 responses and I identified  
12 120 of them. And I want to point out here one thing.  
13 Dr. Ugone yesterday said that -- actually, he just -- he  
14 quoted me. He said that I quoted controlling a device, and  
15 he looked for that search term and he did have zero hits.  
16 So, I want to point out to --

17 THE WITNESS: Can you pull up from page 12 of my  
18 supplemental report?

19 A Our reports in this case are very long and, of course,  
20 then I present -- I don't get to present it. I only present  
21 about an hour and a half, so I don't get to tell you all the  
22 details of the work I did.

23 So, I want to explain to you what it means "controlling  
24 a device", which I explained in my report in detail, which I  
25 assumed the other side's experts would have studied them.

1 BY MR. BERQUIST:

2 Q We'll have to come back to that, Dr. Ikizler. We can't  
3 find your supplemental report here this morning.

4 A It's in that batch that I prepared for Paul.

5 THE WITNESS: It's the second item, Paul, not the  
6 first one.

7 MR. BERQUIST: I think that's the third item, Paul.

8 THE WITNESS: That's the third item, yes.

9 A Well, while we wait for that, I want to tell you what  
10 happened.

11 So, with the survey results I want to -- one of the  
12 critiques that Dr. Ugone highlighted yesterday, they said my  
13 search terms was over-inclusive, and they even put some  
14 testimony from the technical expert, Joe McAlexander. They  
15 said look, these terms are too broad.

16 So, I want to make the distinction between when they  
17 say too broad, what they did not touch on. To capture the  
18 entire patented features, we only used eight search terms.  
19 Eight search terms. And they say they are too broad.

20 What they did not specify is in specific language we're  
21 looking at 12,000 customer reviews. We're trying to  
22 identify customers, what did they like about these products  
23 and what they liked about these products, do they tie back  
24 to the patented features.

25 Only used eight search terms. And imagine how people



1 use these products in infringing ways. You speak to your  
2 Echo, say, "turn my lights on", "turn my lights off". You  
3 can say, "lock my door." You can say, "adjust my -- adjust  
4 the temperature", "increase the AC, decrease the AC."

5 I limited only to eight terms, but they're claiming  
6 that these eight terms are too broad. But what they are not  
7 taking into account is there's a lot of terms that was not  
8 in those search terms. In other words, it wasn't biased  
9 towards over-inclusion. It was just not targeted enough.  
10 It wasn't targeted enough is what they're trying to say.

11 And that's what Joe McAlexander was trying to say,  
12 because I used search terms "smart home," "automation,"  
13 "sound quality", "video quality", "audio quality,"  
14 "resolution."

15 These terms, broad, yes. But are they biased towards  
16 increasing the percentage? No. And I explained this in my  
17 deposition in January to Amazon's counsel very carefully.

18 So, they capture some things that are not related to  
19 the patents, but they also fail to capture a lot of the  
20 customer reviews, such as the examples I gave you, turning  
21 the lights on.

22 Nowhere in my customer review search terms, they could  
23 not be captured. In other words, I spot-checked my results,  
24 but I did not want to alter what Dr. Joe McAlexander gave me  
25 as the search terms because they generally balance each

1 other out. There was some over-captured, some  
2 under-captured.

3 But after my deposition, this issue came up. So, I  
4 went back to this survey, which I didn't have at the time.  
5 I looked at people's 944 responses. How did they explain  
6 how they enjoy these products?

7 So, I noted --

8 THE WITNESS: Thank you. This is actually great  
9 timing because that's exactly where I was.

10 BY MR. BERQUIST:

11 Q Is this -- is this the portion in your report --

12 A Yes.

13 THE WITNESS: Can you make it slightly smaller?  
14 Slightly smaller. Great.

15 A So, this is coming from my supplemental report. It's in  
16 the data appendix, and I understand sometimes people don't  
17 read the appendix. I do typically.

18 And Dr. Ugone -- that's why I said controlling a device  
19 in quotations. You can see on the left side I defined it in  
20 my report what it means.

21 And I didn't define it myself. I -- I defined it using  
22 Dr. Simonson's analysis, went through 944, because --  
23 because I was criticized for being too broad. So, I  
24 specified, okay, let's focus on controlling smart home.  
25 What did people use as terminology to explain this concept

1 of controlling a device? So, I identified the specific  
2 terms.

3 And then what did I do? I went back to the customer  
4 reviews with these specific terms because they -- I was  
5 criticized it wasn't targeted enough or too broad. So, I  
6 redid the analysis. What do I find? 12.7 percent.

7 And what was the average percentage I had found  
8 originally? 11.5 percent.

9 That's why I explained to you guys in my original  
10 presentation as validation. What I meant to say is I redid  
11 the analysis with the more focused terms, but I still get  
12 the same results. So, just -- that's my clarification.

13 MR. BERQUIST: Let me have Ugone slide 32. Ugone  
14 slide 32.

15 BY MR. BERQUIST:

16 Q Let's change topics. You heard Dr. Ugone assert that  
17 your profitability analysis was overstated or inflated, in  
18 his words.

19 A Correct. And I'm going to actually display his slide  
20 here on the screen. This is what he showed.

21 THE WITNESS: Can you show the next one real quick?

22 A He said this was what has to be done. This is the  
23 argument.

24 And let me explain, you -- I'm sure you guys are  
25 slightly confused, how can two economists just say two

1 things so separately and they both claim to be professional.  
2 Let me explain to you guys how -- how this formula is being  
3 misused here and why the first formula is the correct one.

4 THE WITNESS: Can you go back to the first one, Paul?

5 A So, I'm going to use Dr. Ugone's own example. Remember  
6 the example he said you buy an Echo device and there's a  
7 book, right? You buy an Echo device and three days later --  
8 that's after you buy the Echo device, a month later, let's  
9 say, you buy a book from Amazon. This is the downstream  
10 revenue for Amazon. That's downstream profit.

11 When you calculate profitability from an accounting  
12 perspective, you calculate profitability of what you're  
13 selling. Am I selling to customers a book and an Echo  
14 device combined as a package? Sometimes you go on a  
15 website, you see a bundle of goods sold together, so you  
16 know when you're clicking on the buy button you're paying  
17 for a book and an Echo device.

18 In this instance is the accused product sold together  
19 with the downstream products? No.

20 THE WITNESS: Can you go to next slide, Paul, the one  
21 that's 614, page 19?

22 A And he also -- in his deposition testimony, Dr. Ugone  
23 testified he did not know it was causally tied -- let's read  
24 this. This is very important. This summarizes the entire  
25 case for my purposes: Profitability model -- start from the

1 second sentence: As customers engage with their devices,  
2 they increase their engagement with other Amazon businesses  
3 in a way that provides economic value to Amazon and in a way  
4 that can be causally tied back to the device purchase or  
5 registration.

6 And also when I highlight, it says it's used to monitor  
7 profitability. So, Amazon says these DSI revenues are used  
8 to monitor profitability and it's necessary to measure.

9 So, the point I want to make here is this book is  
10 causally tied, it's only sold because this device is sold.  
11 And the customer didn't purchase the book when they  
12 purchased the Echo. They changed their habits. They  
13 started buying more from Amazon.

14 Amazon has some of the world's best economists using  
15 statistical causal models that was used -- described earlier  
16 in this case to calculate this. And Amazon thinks it's  
17 important to measure the profits.

18 THE WITNESS: So, can you go to the 520, page 9,  
19 please?

20 BY MR. BERQUIST:

21 Q For the record, we're talking about Exhibit PTX-520.

22 A Okay. So, this is the Amazon Echo device BRD that we  
23 talked about. This is -- so, I want to just highlight how  
24 we did not make up anything. This entire number calculation  
25 is coming from this formula.

1 And I don't know where Dr. Ugone is getting the idea  
2 that DSI revenues have to be the denominator, because I  
3 haven't seen DSI revenues mentioned in any of these  
4 documents. So, let's take a look at this.

5 THE WITNESS: Can you show -- can you not highlight  
6 one second? Show the whole page?

7 TECHNICAL PERSONNEL: Yes.

8 A This page here, program financials for Echo device, it  
9 starts with units forecast, comes down to highlighted  
10 lines 7 through 11 which measures about profitability.

11 So, nowhere in this page I see DSI revenues. I see DSI  
12 profits being mentioned and being used for decision-making  
13 for high level executives, as I highlighted, like Jeff  
14 Bezos. Why don't they just list the DSI revenues if it  
15 mattered to them?

16 MR. DACUS: Your Honor, I don't want to interrupt,  
17 but if we're going to talk about this, under the Court's  
18 procedures, we'll have to seal the courtroom.

19 THE COURT: Okay.

20 MR. BERQUIST: Oh, I apologize. I didn't even think  
21 of that.

22 THE COURT: Okay. Well, we'll go ahead and anyone  
23 who's not subject to the protective order will need to leave at  
24 this point. It shouldn't take -- won't take very long.

25 (Courtroom sealed.)

















1 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED].

2 (Courtroom opened.)

3 BY MR. DACUS:

4 Q Let me try to unpack a little bit of that if I could,  
5 sir.

6 MR. DACUS: Ms. Conrad, I'm trying to get the  
7 document camera.

8 THE COURTROOM DEPUTY: It takes a second. It should  
9 be up.

10 MR. DACUS: Thank you.

11 BY MR. DACUS:

12 Q So, I just want to make sure I understand on this issue  
13 of counting products and the ones that you counted in the  
14 damages calculation, okay? Are you with me so far?

15 A Yes.

16 Q All right. So, you admit to the jury that the Echo  
17 Input, Mr. McAlexander actually didn't claim that it  
18 infringed, correct?

19 A Yes. He said he didn't analyze it, so, I excluded it.  
20 Correct.

21 Q And then as I understand it, the position is that these  
22 Fire HD tablets that also have separate kids' versions,  
23 three different separate kids' versions, the claim is that  
24 those were included in just the analysis of the regular Fire  
25 HD products; is that correct?

1 A That's correct. That's -- I'm citing Mr. McAlexander's  
2 testimony.

3 Q So, you see over here Mr. McAlexander separately broke  
4 out the kids' products for the Echos, correct?

5 A I see that, yes.

6 Q But the contention is that he did not separately break  
7 those out for the tablets. He just included them in the  
8 regular tablet analysis. Is that the -- is that the claim?

9 A He said that -- his claim is that Fire Tablets that are  
10 kid versions are not -- from an infringing standpoint, they  
11 are not different than the Fire Tablets, the non-kid  
12 versions, but they may not be applicable to the Echo Kid  
13 versions. I don't know how products differ for kid  
14 versions. I haven't analyzed these products.

15 Q Okay. Let's talk briefly -- you and I talked at length  
16 the other day, but let's talk briefly about this calculation  
17 that you did, and let's make sure we're clear here.

18 The goal is and your requirement is to tie the profits  
19 that you're claiming to the specific patented feature, true?

20 A To the patents at issue.

21 Q Correct. To the patented features in the patents in  
22 this lawsuit. That's what you have to do in your  
23 calculation of damages, correct?

24 A It's slightly different. It's not to tie to the  
25 patented features one by one necessarily. It's to

1 understand what would Amazon agree the value of the patent  
2 to them at the time.

3 And the reason I'm making the distinction is -- which I  
4 didn't explain this, I think, probably very well on my  
5 testimony first. It's the issue of if I have five fingers,  
6 they may be valuable one at a time -- this is \$1 million  
7 worth, this is \$2 million worth, this is \$2 million. But  
8 together as a hand, they may be more valuable.

9 That's why I'm disagreeing with you that it's not just  
10 a feature-by-feature separation that's necessary. You have  
11 to look at the whole thing together.

12 Q So, let me see if I understand, Dr. Ikizler. Let's  
13 assume that I had a patent on a cake recipe. Have you ever  
14 made a cake?

15 A I do actually.

16 Q Okay.

17 A I'm a good baker.

18 Q So, let's assume that I had a patent on a cake recipe.  
19 So, included in that cake recipe is going to be eggs, flour  
20 and sugar, maybe among some other things, correct?

21 A I understand, yes.

22 Q So, you would agree with me, sir, that if you were  
23 valuing the value of that new recipe, I should not value the  
24 eggs, the flour, and the sugar separately because those  
25 existed long before my new recipe, correct?



1 A Let me give you an example using your own example.

2 Q I'd like for you just to answer my question.

3 A It would --

4 Q You actually agree with me, sir, that you should not be  
5 valuing the value of the egg separately, the flour  
6 separately, and the sugar separately, because those existed  
7 long before your recipe. Isn't that a true statement, sir?

8 A I think we're on the same page, because I said exactly  
9 the same thing. I said don't -- don't value the fingers  
10 separately. I think you're saying the same thing. Not  
11 because they are patented, but that's also a factor, but  
12 what is the patent -- patent's contribution? Is it about  
13 the hand coordination?

14 In the cake example that you're giving, if you have a  
15 specific way you scrambled the eggs before you fold the  
16 cake, let's say, there's certain steps that you could  
17 contain -- that step that could contain an egg. The way you  
18 process the egg may matter, but the egg itself, of course,  
19 you didn't invent the egg. But the way you process the egg  
20 may affect the total -- the output.

21 Q And let's try to move from our example to what's going  
22 on in this case. In this case, at least as best as I can  
23 understand it, the invention is a smart home control  
24 integrated system, correct?

25 A I heard those terms yesterday many times. I don't want

1 to -- if my -- my lay understanding, that all sounds correct  
2 to me. But from a technical perspective, I don't want to be  
3 judging any of the technical terms.

4 Q And, so, based on what you've told us, what we need to  
5 do, and what you're required to do, is to value that alleged  
6 new inventive system. You agree with that, correct?

7 A No. I never agreed to that. I said what would Amazon  
8 want to pay to that. Again, I gave you the example. This  
9 is not something you buy and resell. It's valuable -- if  
10 Dr. Wong was trying to sell me this technology, I wouldn't  
11 pay anything because I have nothing to do with this. Why  
12 would I license this technology?

13 But to Amazon it means a lot. So, it really matters --  
14 I mean, if -- if somebody came up to me, you want to license  
15 my patents? On this I'm in the product development for that  
16 technology. It does not mean anything to me. So, I don't  
17 agree with that question.

18 Q Let's see if we can do it this way, sir. You agree that  
19 you absolutely, in performing your analysis, you relied on  
20 Mr. McAlexander's selection of terms, correct?

21 A For the first analysis in the original December report.  
22 Not the supplemental report. The eight search terms I said,  
23 eight search terms are coming from him directly.

24 Q Let's look a little closer. This is Exhibit 12D from  
25 your report, correct?

1 A Yes.

2 Q You see those terms in the middle row there or column  
3 entitled Section?

4 A Correct.

5 Q All of those came from Joe McAlexander, correct?

6 A Correct. And I just want to clarify. This has nothing  
7 to do with the search terms. And it's been confusing the  
8 whole time to the jury, because it's been misused in  
9 Dr. Ugone's presentation yesterday. Search terms used in  
10 customer reviews. This is BRD analysis.

11 Q Correct. You used the BRD analysis in -- in part of  
12 your calculation, correct?

13 A Yes. Yes.

14 Q Okay. And you got these terms from Mr. McAlexander,  
15 correct?

16 A Again, it's not terms. It's sections. He identified  
17 sections.

18 Q You got these sections from Mr. McAlexander, correct?

19 A No. He identified -- we're both looking at the same  
20 document over the phone. He told me the section numbers on  
21 the phone. We were looking at it. All right. Next page.  
22 Which sections are related to or benefited from the patented  
23 technology. That was the exact line of questioning. He  
24 identified the section. I listed them all in my report.  
25 That is -- that summarizes the whole process.

1 Q Okay. And, so, all I'm trying to confirm here, sir,  
2 is -- let's just use, for example, you see the word "audio"  
3 there?

4 A Correct.

5 Q So, you took the search term "audio," and you used that  
6 in your calculation, correct?

7 A There is no search term here. I've been trying to  
8 correct you every time.

9 Q You used the term "section" in your calculation,  
10 correct?

11 A There's no term analysis.

12 So, could you pull up the BRD? I can explain to you  
13 exactly what happened so nobody is confused about this.

14 Q You and I have already been through that, sir.

15 At a high level, what you did is you took these  
16 sections that you contend relate to the patented features in  
17 this case and you divided it by the total sections in the  
18 BRD to come to a percentage. That's what you did; isn't  
19 that true?

20 A That is correct, yes. Now you correctly -- correctly  
21 characterized it.

22 And that audio section, for example, has multiple  
23 information in a big box, in one page-long box, the  
24 technical details of how Amazon uses audio in their  
25 products.

1 Q And, so, I have two questions for you, sir. With  
2 respect to audio, you agree, at least based on what you've  
3 heard in this trial, that the Echo product has hundreds, if  
4 not thousands, of audio features that were developed by the  
5 engineers at Amazon and have nothing to do with these  
6 patents. Will you at least agree with that?

7 A I agree with that statement except with -- I agree with  
8 your statement. That's very accurate, because audio can be  
9 used in so many different features. Even if you don't have  
10 a smart home in your product, you could still use audio.

11 But the issue is the way you use the audio feature to  
12 send a signal to controlling your device is also part of the  
13 audio ability. And if you don't do it high quality, you  
14 can't offer high quality smart home controlled device to  
15 your clients. So, it contributes to the selling of this  
16 product.

17 Q My point is, sir, when you included -- let me back up  
18 and ask you a question to make sure we agree.

19 You agree that there was hundreds, if not thousands, of  
20 audio features in the Echo that existed long before this  
21 alleged invention, correct?

22 A Absolutely.

23 Q Okay. So, just to tie this back to our early example,  
24 what you've done here, sir, is you've taken the eggs in that  
25 cake recipe and you've individually valued the eggs, because

1 the audio features existed long before this alleged new  
2 recipe or system that was designed or invented by Anne Wong,  
3 correct?

4 A No. Where is the value in this exhibit? Where is the  
5 value for audio here? Tell me the value for audio.

6 Q You're the one that took all of these sections, sir, and  
7 you put them in the numerator, including audio, which, by  
8 your own admission to this jury 30 seconds ago, includes  
9 hundreds, if not thousands, of features that are not related  
10 to the patents, correct?

11 A That's correct. But I didn't attribute a value to the  
12 audio, sir. I did not attribute a value, say what's the  
13 value attributable to audio in this device. I collectively  
14 looked at all of these things together, all of them as a  
15 package. Because, again, as I agree with you, we're trying  
16 to value the -- the value of the recipe to Amazon, in your  
17 case the cake recipe, not the value of audio.

18 I don't have a value in my report that says if -- if  
19 Amazon just wants to buy the audio-related technology of the  
20 feature, this is how much it would cost. That's not an  
21 analysis that would have been appropriate.

22 Q How about you and I leave it at we have a dispute and  
23 we're about to have closing arguments and the jury can  
24 decide whether or not you did that part of the calculation  
25 correct? Does that sound fair?

1 A I think that sounds very fair.

2 Q Thank you.

3 Now let's talk about this profit calculation that you  
4 did. Okay?

5 A Yes.

6 Q And so that we all know what we're talking about, in  
7 your calculation -- this is the information or the slide  
8 that you showed the jury related to your calculation,  
9 correct?

10 A Yes.

11 Q And what I've circled here, this lifetime value divided  
12 by the average selling price, that's sort of what you -- not  
13 sort of. That's what you contend is the, quote, profit,  
14 correct?

15 A Profit -- profitability, I would say.

16 Q Profitability?

17 A Correct.

18 Q And that's what you used in your calculation, correct?  
19 Those numbers, true?

20 A Yes. That's the beginning -- that's the start -- that's  
21 the starting point for the analysis.

22 Q And here's what I want to be very clear, sir. This  
23 lifetime value number includes the downstream sales of other  
24 products, correct?

25 A Profits coming from downstream sales.

1 Q Profits from downstream sales.

2 You agree, sir, and you would certainly admit that none  
3 of those downstream sales use these patented features.

4 They're not accused in this case, correct?

5 A They are not accused products, no, but they are sold  
6 thanks to the -- causally, by the accused products. As I  
7 explained, if you don't have these features, you're not  
8 going to sell as many Echo speakers.

9 Q And that's what I want to make sure. So, your position  
10 to this jury is because people use an Echo Dot to buy other  
11 products -- shoes, tennis rackets, whatever -- that they  
12 should include that in this calculation, correct?

13 A Here's I would say -- what you said is mechanically  
14 correct, but I would say when Amazon decides should I  
15 license this product or not, they would think about can I  
16 sell this Echo to my customers. They would have considered  
17 what does it bring to me. And those shoe sales and book  
18 sales that you mentioned, it would have been in Amazon's  
19 minds because it's in every document they talk about.

20 Q Let's go back to where we started this and let's make  
21 sure we're still on the same page. Your job, and ultimately  
22 the jury's job, is to value only the patented features,  
23 correct?

24 A To Amazon.

25 Q To Amazon. And the patented feature is, allegedly, a



1 smart home control integrated system, correct?

2 A Smart home control features. Can we say that, just so I  
3 don't agree to some terminology? I know it was in dispute  
4 yesterday with the technical expert. I don't understand  
5 that integrated thing.

6 Q So you just want to call it smart home features?

7 A Controlling devices, controlling smart home devices.  
8 Can we just call it that way?

9 Q So, in order for your theory to work, knowing what you  
10 told us that the profit has to be tied to the features -- in  
11 order for your theory to work, the jury has to believe that  
12 someone bought tennis shoes and tennis rackets and whatever  
13 else they bought --

14 A Yes.

15 Q -- that are not accused, because there was a smart home  
16 feature in the Echo Dot, correct?

17 A It's one of the reasons. That's why we did the  
18 apportionment. That is why you multiply that profit with  
19 the next column which says incremental.

20 Q So, your position is -- just so we're clear, and we  
21 don't need to argue, your position is people bought tennis  
22 shoes and shirts on their Echo Dot because there's a smart  
23 home feature included in the Echo Dot. Yes or no?

24 A 10 percent, yes, because that's what the apportionment  
25 shows. 10 to 12 percent of the people, they buy it because

1 of that feature.

2 Q I do want to address one thing before I sit down,  
3 Mr. Ikizler. You referred to Dr. Simonson, correct?

4 A Correct.

5 Q You, of course, know Dr. Simonson is well into his late  
6 70s, correct?

7 A I did not know that at all.

8 Q You knew that's why he didn't travel here for this  
9 lawsuit, correct?

10 A I did not know any of that stuff.

11 Q You also know, sir, that these lawyers at this table  
12 took Dr. Simonson's deposition, correct?

13 A I know he got deposed, yes.

14 Q And if there was anything in Dr. Simonson's deposition  
15 that they thought was advantageous or beneficial to their  
16 case, they certainly could have played it. You agree with  
17 that?

18 A Of course, yeah. I just want to clarify, I didn't know  
19 that he didn't travel -- I didn't imply anything bad for  
20 Dr. Simonson not traveling. I mean, my wife didn't want me  
21 to travel.

22 Q And then I have one last thing to address with you.  
23 When folks are sitting at a negotiating table and they are  
24 negotiating a patent license, if I'm the individual or the  
25 company that is attempting to gain a license to a patent,

1 you understand who I am and what I'm talking about in my  
2 hypothetical?

3 A Yes, sir.

4 Q As you've said, that person sitting at that table is  
5 going to be thinking about what value do these patented  
6 features have to my products, correct?

7 A Absolutely.

8 Q I mean, that's going to be first and foremost in their  
9 mind, correct?

10 A I think that's correct.

11 Q So, when LG and Samsung are sitting at that table, first  
12 and foremost in their mind, according to you, is what do  
13 these patented features contribute to my product, correct?

14 A Yes, patents, not the features again. Patents, yes.

15 Q And, so, the thing that you and I just said, sir, sounds  
16 an awful lot like -- in fact, exactly like apportionment,  
17 correct?

18 A Yes.

19 Q So, when you say Dr. Ugone did not consider  
20 apportionment, that's not a true statement, is it, sir?

21 A Oh, it is very true. He looked at -- he assumed -- he  
22 has no idea what -- what the smart phones that he counts in  
23 his comparison, what did the -- how did the smart home  
24 benefit from these patents. He doesn't know.

25 Q What he does know, from real world and not from

1 calculations done for the purpose of a lawsuit, is that LG  
2 and Samsung sat at that table and, according to you, first  
3 and foremost in their mind was how do I apportion the value  
4 of these patented features so that I can buy a license. And  
5 what they paid, at least for LG, was \$1.85 million, correct,  
6 sir?

7 A Correct.

8 MR. DACUS: All right. That's all I have.

9 Pass the witness, Your Honor.

10 THE COURT: Anything else?

11 MR. BERQUIST: Just one or two quickly, Your Honor.

12 MR. DACUS: Where are we on time, Judge, so that I  
13 know the time?

14 THE COURT: I'd have to ask my trustee assistant  
15 here.

16 MR. DACUS: Understood.

17 THE COURT: We'll get it for you.

18 Go ahead.

19 REDIRECT EXAMINATION

20 BY MR. BERQUIST:

21 Q Dr. Ikizler, hopefully I just have two quick questions.

22 Now, is it your theory or was it Amazon's theory that  
23 the LTV for each product is measured by adding the profit  
24 per unit plus the DSI?

25 A That's exactly how Amazon does it, and it's -- that's

1 why Amazon calls it LTV per device. I showed it so many  
2 times I don't know how to dispute with what Amazon does.  
3 LTV per device. They don't say LTV per device plus, in  
4 parentheses, shoes, books, et cetera that could be  
5 attributable down the line. They say LTV per Echo device.  
6 It is attributed to Echo.

7 Q So, just so we're clear, you saw that Amazon approaches  
8 it this way and you accepted it. You didn't create that  
9 theory.

10 A No. I used exactly what -- that's exactly why they do  
11 the pricing strategy they do. It's exactly what they do. I  
12 just followed it.

13 Q And let's talk about the causation. Did you decide that  
14 the -- that the downstream sales -- that there is a causal  
15 connection to the sale of the accused products or was that  
16 Amazon?

17 A I didn't decide it. I showed actually the jury five  
18 documents that say causally tied using statistical causal  
19 models. It's not coincidence that when somebody buys Echo  
20 they happen to buy more shoes. Right after they purchase  
21 it, they start buying more. This is historical data. They  
22 look at your customer purchase behavior before and after you  
23 buy it. It's -- it's fully contributed only to the sales of  
24 the accused products causally.

25 Q My question is more simple than that. Was that your

1 theory or Amazon's theory that you accepted?

2 A It's fully coming from Amazon documents which I  
3 presented in my direct testimony.

4 MR. BERQUIST: Thank you. That's all I have.

5 THE COURT: Additional questions?

6 MR. DACUS: Just a couple, Your Honor.

7 RECROSS-EXAMINATION

8 BY MR. DACUS:

9 Q Let's just be very clear, Mr. Ikizler. What Amazon  
10 measures -- and there is no dispute -- is the profit on  
11 products that folks buy if they purchase an Echo Dot,  
12 correct?

13 A Yes.

14 Q And that's the information you used, correct?

15 A Yeah. Yes.

16 Q But your job here, as you've already admitted, is very  
17 different. Your job here is to determine which of those  
18 purchases downstream were caused by this smart home  
19 invention, correct?

20 A That's correct, and I -- that's exactly what I did.

21 Q And that's very different than who bought shoes and  
22 shirts because they bought an Echo Dot. Those are two very  
23 different questions. Don't you agree?

24 A How is it different?

25 Q So, you see them as the same?

1 A Echo causes people to buy more, and what makes people  
2 buy Echo? One of the reasons what makes people buy Echo is  
3 ability to control smart home devices. They are fully,  
4 clearly -- I don't understand how somebody could dispute  
5 this. You buy Echo because it has features. In fact,  
6 people say clearly and loudly, I need the smart home  
7 feature. If there is not smart home feature, you would not  
8 have sold as many units. It's simple math.

9 Q So, one last question, and then I'll sit down.

10 So, what you've just said to the jury, sir, is some  
11 portion of the people, at least under your theory, buy an  
12 Echo because of the smart home feature, correct? That's  
13 what you said.

14 A Not my theory. Amazon's own survey expert's findings.

15 Q And you said 10 percent. That's -- that's what you just  
16 said, correct?

17 A 10 to 12 percent, yes.

18 Q Yet, when you step over to downstream sales, you don't  
19 just take 10 percent of those, which is what the patented  
20 feature, at least in your theory, contributes to people  
21 buying Echo Dots. You take the entirety, 100 percent of  
22 these downstream sales, just because people bought an Echo  
23 Dot. That's a true statement, correct, sir?

24 A It's -- it's absolutely so wrong on so many levels  
25 because, first of all, it's DSI profits, not revenues.

1           Second, I multiply it with 10 percent. I explain it so  
2 many times. I take the profits and multiply it with the  
3 apportionment rate. I only attribute the multiplication,  
4 profits times apportionment.

5           MR. DACUS: That's all I have, Your Honor.

6           THE COURT: Anything else?

7           MR. BERQUIST: Nothing, your Honor. Thank you.

8           THE COURT: Okay. Ladies and gentlemen, you know the  
9 drill. If you have a question or whether -- whether you do or  
10 don't, if you'll just fold a piece of paper and pass it over to  
11 the court security officer.

12                           (Pause in proceedings.)

13           THE COURT: Could I have counsel approach?

14                           (Bench conference, off the record.)

15           THE COURT: I've got a few questions from the jury.

16           Was there an individual dollar amount given to each  
17 section in the analysis for, like example, audio? That's  
18 the -- they said as an example.

19           So, was there an individual dollar amount given to each  
20 section in the analysis, i.e., like audio, et cetera?

21           THE WITNESS: No. That analysis only gave us  
22 percentage for the entire patented product. That's it. No  
23 individual dollar amounts for audio nowhere in my report. It  
24 was never part of the opinion. It was misrepresented by the  
25 counsel.



1 THE COURT: And then are Amazon's marketing skills or  
2 Innovation Sciences' inventions the main reasons for the  
3 downstream profits?

4 THE WITNESS: It's 10 -- it's exactly 10 to  
5 12 percent of the reason, and that's the whole purpose of the  
6 apportionment. Because apportionment tells us what percent of  
7 this -- why do people buy this product. And we estimated 10 to  
8 12 percent comes from the patented features.

9 And then we look at the profits, and then we split it  
10 to one-tenth to say, okay, if you're making \$2 billion in  
11 profits -- clearly not -- but you divide it by 10 percent,  
12 because that's the only part of the profits that's  
13 attributable.

14 THE COURT: And then, if you know, did you look to  
15 see what the value of the diaper invention was or is?

16 THE WITNESS: I only saw it with you guys on the --  
17 on the stand here. I understand that was a different patent  
18 application, but that's all I know.

19 THE COURT: And what are the main factors you and  
20 Dr. Magee believe makes Amazon liable for a hundred million  
21 dollars?

22 THE WITNESS: I missed the first part of the --

23 THE COURT: Sure.

24 What are the main factors you and Dr. Magee believe  
25 makes Amazon liable for a hundred million dollars?

1           THE WITNESS: That's a great question. It comes down  
2 to, okay, to summarize why it's a hundred million dollars. I  
3 guess why I wanted to highlight the important points in this  
4 slide.

5           First of all, Dr. Ugone identified the non-infringing  
6 alternatives, which means if Amazon sat down at that  
7 hypothetical negotiation table and just wanted to walk away,  
8 I'm not licensing this product, but I'm not going to  
9 infringe on it because that's not lawful, they could have  
10 offered the product to the marketplace that is not  
11 compatible with Bluetooth or ZigBee, just used WiFi. That's  
12 what he said. Or just only allow people to use -- adjust  
13 their temperatures off-line, which means connected device to  
14 Internet.

15           Think about how marketable it is. In my opinion, it's  
16 not marketable at all.

17           And the third option is just do not offer -- offer  
18 smart home features.

19           Let's think about these three options. If you do not  
20 offer smart home features altogether, your sales go down --  
21 will go down. It's evident that 10 percent people said in  
22 the survey, per Amazon's expert's survey -- that they would  
23 consider they want to have the smart home feature in -- when  
24 they purchase a smart speaker. So, there would -- their  
25 sales would go down, right? That's exactly 10 percent of

1 Amazon's profits we attribute to the sales.

2 Second option, you offer this product without the  
3 WiFi -- sorry -- without Bluetooth and ZigBee. And I, as a  
4 purchaser myself, I go online. I do some research before I  
5 purchase a product. If I'm trying to think about -- if I'm  
6 thinking about I'm going to buy a smart home system that can  
7 connect to my devices that I already have, too, if I can't  
8 use Bluetooth to connect to my devices, to me, it will make  
9 me less likely to purchase an Amazon device compared to its  
10 competitors. So, it damages its competitive advantage. So,  
11 again, that's the other option.

12 But to summarize the point, why \$100 million, good  
13 question. That's why we have to use a systematic approach.  
14 For me, the most reasonable approach, which we decided, is  
15 find out exactly how much Amazon benefited from sales of the  
16 accused products, right? The profits. And then calculate  
17 exactly 10 percent of it, because that was -- the 10 percent  
18 is thanks to the patented invention. And that's the maximum  
19 that they would pay at the table. They would not want to  
20 pay more than that. That's why.

21 THE COURT: Thank you.

22 Any follow-up?

23 MR. BERQUIST: No, Your Honor.

24 MR. DACUS: No, Your Honor. Thank you.

25 THE COURT: Okay. You may step down. Thank you.

1           What says the Plaintiff?

2           MR. JACKSON: We have no more rebuttal witnesses.

3           THE COURT: Okay. So, you -- so, you close?

4           MR. JACKSON: Yes. We're closing, Your Honor.

5           THE COURT: Defense?

6           MR. DACUS: Amazon has no more witnesses, your Honor,  
7 and at this time Amazon closes.

8           THE COURT: Very well.

9           Okay. So, ladies and gentlemen, you have now heard all  
10 the evidence. The next thing we need to do is have the  
11 closing arguments for both sides and then my final  
12 instructions.

13           We're just going to take like a 10-minute break, send  
14 you back to the jury room just to get reset up for the  
15 closing arguments, and then we'll have those.

16           Just so you know, I've given each side about an hour  
17 and 15 minutes each, and we're going to go through both sets  
18 of closing arguments, and then I'll check and see if you  
19 need a break before I give you my final instructions. Or we  
20 can go straight through. We'll just see how y'all feel  
21 about that, and I will ask that.

22           But, again, even though you've heard all the evidence,  
23 you still can't discuss it. So, please don't discuss the  
24 case when you go back to the jury room. And then come back  
25 and we're -- we're almost done. So, thank you very much.

1 (Jury exits the courtroom, 9:35 a.m.)

2 THE COURT: Okay. So, anything further from  
3 Plaintiff? Did you -- let me ask, did y'all work out an  
4 agreement on -- I know it was starting to be discussed at our  
5 charge conference last night in terms of your motions and  
6 everything.

7 MR. JACKSON: We made a proposal by e-mail, Your  
8 Honor, for the ability to file those motions on the papers  
9 within 14 days of today. I haven't really been keeping up with  
10 my e-mail; but as far as I know, I haven't received anything  
11 back.

12 MS. SHAMILOV: Sorry, Your Honor. We received that  
13 at 2:00 a.m. We -- we can't agree to that, Your Honor.

14 THE COURT: Okay. So -- okay. So, I mean, we can  
15 make all the motions. We can do it after we finish today,  
16 then? If you want to do it all orally, that's fine.

17 MR. DACUS: I think our concern, Your Honor, is just  
18 procedurally waiting two weeks on 50(a) motions. We're fine  
19 filing written 50(a) motions today, as long as we do so by  
20 midnight. We're fine with that process, but we have some  
21 concern about waiting two weeks on 50(a) motions.

22 MR. JACKSON: We're flexible on the time. Unlike  
23 Amazon, we haven't written those motions yet. So, a midnight  
24 deadline tonight would be, I think, practically speaking,  
25 unworkable for us. So, I mean, I'm flexible. I originally

1 talked --

2 THE COURT: What about like noon tomorrow?

3 MR. DACUS: That's fine.

4 THE COURT: Not that I'm trying to negotiate this  
5 but --

6 MS. SHAMILOV: That's fine with us.

7 THE COURT: Okay. So, we have agreement on those by  
8 noon tomorrow?

9 MR. DACUS: I'm just being overly cautious here, Your  
10 Honor. I just want it on the record that by filing our 50(a)  
11 motions by noon tomorrow, those will be considered timely, as  
12 if they had been presented prior to presentation to the jury,  
13 correct?

14 THE COURT: Correct, Mr. Dacus. I'm trying to make  
15 this -- I am not -- there is no waiver. I am not trying --  
16 this is not a trick by the Court. I'm just trying to make it  
17 the most efficient use of everyone's time and the jury's time.

18 And then also there is no waiver. We'll do any  
19 objections to the charge. We can do those after the jury  
20 goes out. Again, no waiver from -- since they should happen  
21 now before they go to the jury but --

22 MS. SHAMILOV: That's perfect, Your Honor.

23 THE COURT: So --

24 MR. JACKSON: That's acceptable, Your Honor.

25 THE COURT: Very well. Okay. So, just we'll take

1 ten minutes or as soon as you -- hopefully it doesn't take ten  
2 minutes to get reset up for closing arguments.

3 Did y'all want hard copies? I think my lawyer has hard  
4 copies to give to each side of the -- I believe it was just  
5 that one small change.

6 MR. DACUS: Please.

7 THE COURT: And then I will give the jury a copy of  
8 the charge right before I -- when I read it to them. They  
9 won't get a copy until then. But you are welcome to use, of  
10 course, the charge and the verdict throughout your closing  
11 arguments.

12 Any questions?

13 MS. SHAMILOV: Just on the exhibits that I needed to  
14 move into evidence --

15 THE COURT: Oh.

16 MS. SHAMILOV: -- because those have to go to the  
17 jury.

18 THE COURT: Yes, I understand. And --

19 MS. SHAMILOV: Whenever you would want me to do that,  
20 I just want to --

21 THE COURT: We can do it -- I mean, everyone's agreed  
22 to that list, right?

23 MS. SHAMILOV: Yes.

24 THE COURT: So that we don't waste any more time for  
25 the jury, we'll do that -- just do it first thing when we get

1 out so it's part of the record.

2 MS. SHAMILOV: Will do.

3 THE COURT: Not a problem.

4 Okay. See you back in ten minutes or maybe less.

5 (Recess, 9:38 a.m.)

6 (Open court. All parties present.)

7 (Jury not present, 9:50.)

8 THE COURT: Is everyone ready to go?

9 MR. BERQUIST: Yes, Your Honor.

10 (Open court. All parties present.)

11 (Jury present, 9:53.)

12 THE COURT: Ladies and gentlemen, you've now heard  
13 all the evidence. Please pay close attention. These are the  
14 closing arguments, which is not evidence, but it's the  
15 attorneys' summation of what they believe the evidence has  
16 shown.

17 And, so, we'll start off. The Plaintiff gets to go  
18 first, then the defense, and then the Plaintiff, of course,  
19 gets to finish.

20 Mr. Jackson.

21 MR. JACKSON: Thank you, Your Honor.

22 A company cannot take the idea, the patented idea, of  
23 any American citizen and use that idea without permission or  
24 compensation. That's where we started the case, and that's  
25 where we end this case, too, and that's the reason we're



1 here.

2 And we are counting on you, the members of the jury, to  
3 look at the evidence. And if you agree with us -- and we  
4 hope that you do. We certainly hope you do. And I'm going  
5 to go through a sort of high level summary of the evidence  
6 today -- that you will find in favor of Innovation Sciences  
7 in this case.

8 So, let me start and -- and let me just give you a  
9 little bit of a lay of the land of what I want to do.

10 And I guess, really, before I do, I want to thank you  
11 all for your attention to this case, your patience. It's  
12 been a long -- a long eight days or so, and -- and you've  
13 taken time out of your daily lives to serve on this jury.  
14 It's -- it certainly doesn't go unnoticed by our team, and  
15 I'm sure that's true by Amazon as well. So, we do really  
16 appreciate that.

17 What I want to do is -- is, obviously, I'm going to  
18 tell you a little bit about our view of the evidence, but I  
19 also want to show for you a little bit about what you're  
20 going to be asked to do back in the jury room.

21 Specifically, I'll show you maybe some clips of some of the  
22 jury instructions that Judge Mazzant will -- will give you  
23 later, as well as show you some of the questions that you're  
24 going to be asked on the verdict form. There are five  
25 questions on the verdict form.

1 And, so, what I want to do is show you the verdict  
2 form, talk a little bit about the evidence, and then show  
3 you the way we think you should answer those five questions.

4 So, let me -- let me get started.

5 First of all, Paul, if you would put up the first  
6 slide. I'm already behind the eightball.

7 I wanted to, again, thank you very much.

8 In the opening statement, I told you that Innovation's  
9 inventors played by the rules. They did what they were  
10 supposed to do.

11 Paul, if you would go to the next slide. Actually, I'm  
12 sorry. I forgot I have the clicker. Thank you. This time  
13 I'm driving.

14 As I had mentioned, I believe, in the opening, you  
15 know, they -- they played by the rules. They disclosed  
16 their inventions to the Patent Office. They told the Patent  
17 Office about the prior art that they were aware of. They  
18 paid the fees, which the government fees are not  
19 inexpensive. And eventually, after dealing with the Patent  
20 Office and negotiating the scope of those claims at the  
21 Patent Office, they got their patents. And three of those  
22 patents are the patents that we're dealing with here in this  
23 case.

24 Now, in terms -- and I also want to comment on -- on  
25 Dr. Anne Wong, who you've heard from in this trial and heard

1 a lot about in this trial. And she, too, played by the  
2 rules.

3 She received scholarship offers from schools here in  
4 the U.S. and, you know, wanted to pursue her -- her version  
5 of the American dream. I think every -- every immigrant to  
6 this country has their version of the American dream, and  
7 that was -- she had her version, and that was her  
8 opportunity to come here.

9 And after going through graduate school and getting --  
10 you know, being here on student visas, eventually she  
11 transitioned to work visas, and then there's a -- I'm not an  
12 expert on this, by any means, but I understand there's a  
13 period of time you have to wait, and eventually you can  
14 qualify to become an American citizen. And there's a whole  
15 process for that, and she did that. She's here. She's here  
16 legally. She's an American citizen.

17 She changed her name from her Chinese birth name to  
18 Anne, an American name, because she wanted to fit into this  
19 country. And she's -- she's done that.

20 Now, I want to turn now to the issues in this case and  
21 focus really on the kind of things you're going to be asked  
22 to decide, and I want to start --

23 Let's assume I know how to drive this thing. I'm going  
24 to -- well, I'll get do that in just a second. I apologize.

25 So, I want to talk about Mr. McAlexander. And you'll

1 recall that Mr. McAlexander came in here, and he showed you  
2 the evidence that he relied on to come to his infringement  
3 analyses, his conclusions on infringement. And he relied in  
4 large part on the testimony of Amazon's witnesses, as well  
5 as documents provided by Amazon on the way their products  
6 worked and so forth.

7 And I have hopefully sort of short clips here -- I  
8 haven't looked at them in a while -- but short clips of some  
9 of the witnesses that Mr -- Mr. McAlexander relied on. So,  
10 this is -- these are Amazon's own employees, their own  
11 engineers, who told us and told you here in this case a  
12 little bit about the way their products work. And I just do  
13 this really as a way of reminding you that this isn't  
14 something that Mr. McAlexander just, you know, conjured up  
15 on his own. He was relying on the evidence in this case.

16 So, I hopefully have these -- these three short clips I  
17 want to play for you. The first one was Mr. Zarka. Let's  
18 see if I can make that run.

19 (Video deposition excerpt played.)

20 Answer: That's correct, yeah.

21 Question: Okay. Can you -- maybe it would be easier  
22 for you to just explain, how does Amazon associate --  
23 specifically, how does Amazon associate a, for example, Stick  
24 4K device to a customer's account? How is that association  
25 made within Amazon's systems?

Answer: There is a device identifier that is mapped to a customer identifier.

Question: Okay. And the customer identifier, is that just a numeric string that Amazon assigns to a particular customer?

Answer: It's not numeric, but that's -- that's the idea.

Question: Is it alphanumeric?

Answer: It is alphanumeric.

Question: Okay. But it's --

(Video deposition excerpt concluded.)

MR. JACKSON: So, there were other witnesses and we played some of those deposition videos for you.

Mr. Arlen Dean, for example, he was another witness from Amazon, and he testified about lots of topics, one of which happened to be the ability to make phone calls, which I had no idea when I started this case that you could actually do that through an Amazon Echo and products like that from Amazon. But I thought -- I found that fascinating.

And then also we had Mr. Mark Aiken, another one of the witnesses whose deposition we played for you. And he talked about how -- how the Amazon Cloud worked. That was really kind of his more area of expertise.

So, I'm going to actually -- just in the interest of

1 saving time, I'm going to -- I had clips from those two  
2 individuals, but I'm going to skip through that just to  
3 speed things along.

4 Mr. Aiken was -- we didn't have his video but we have  
5 his testimony. And, again, here -- here's where he's  
6 talking a little bit about how Ring cameras interface with  
7 Echo products.

8 So, this was -- these were things that Mr. McAlexander  
9 relied on.

10 He also -- Mr. McAlexander testified about the process  
11 that he goes through to analyze these claims.

12 And I apologize for having you sit through and listen  
13 to an extremely long day of testimony that was probably very  
14 tedious. Even for -- even for us here at this table it was  
15 a bit tedious.

16 But as Mr. McAlexander explained, he has -- he had to  
17 do that. He has to do the analysis on an element-by-element  
18 basis, on a claim-by-claim basis, on a product-by-product  
19 basis, and it just takes a lot of time. And I apologize for  
20 that, but it goes to his thoroughness. You know, he did  
21 that work, and he did that work so that he could present it  
22 to you.

23 And I think that, you know, this was -- this slide here  
24 was his trial testimony about his process. But his process  
25 included things like, you know, getting familiar with the

1 patents, reading the claims, trying to get an understanding  
2 of those claims, making sure he understands the scope of the  
3 claims, applying the Court's claim construction.

4 Judge Mazzant has told the parties what certain terms  
5 mean where we've had a dispute about what exactly it means.

6 And then, you know, based on the documents produced in  
7 the case and the testimony in the case and any additional  
8 research he had to do as part of his work as an expert, he  
9 comes to the conclusions that he's given you. I don't need  
10 to tell you what those are. He concluded those products  
11 infringed.

12 He also testified that he does this not just as an  
13 expert. He does this type of analysis commercially as well.  
14 It's just what he does. He -- this is simply a courtroom  
15 setting where he's applying his expertise.

16 Now, you're going to be asked on the verdict form --  
17 this will be actually the first question. You'll be asked  
18 whether Innovation has proven that Amazon's products  
19 infringe any of the asserted claims. And, so, I'm going to  
20 put up on the screen, hopefully, what is that -- sorry. We  
21 start with the jury instruction. I apologize.

22 So, this is the jury instruction you're going to be  
23 given, or it's a part of it. Honestly, it's much longer  
24 than this, but I tried to pull out at least what I thought  
25 was the most relevant part of the jury instruction for how

1 you are going to be asked to determine whether the Amazon  
2 products infringe.

3 And among other things -- this is what we call direct  
4 infringement. That's the first part. There are multiple  
5 ways that a party can infringe a patent, and I'm going to  
6 touch on all three of those.

7 There is what's called direct infringement, and that is  
8 as stated here. I'm going to paraphrase this, so you should  
9 rely on the instruction and not my -- not my explanation.

10 But it's whether -- whether Amazon, in this case, made,  
11 used, sold, offered for sale, or imported a product that  
12 literally meets each and every claim element of each of the  
13 claims that those products are accused of infringing.

14 That's where you have to go through this laborious  
15 process to prove that to the jury, and that's what  
16 Mr. McAlexander did.

17 And, so, I want to talk a little bit about direct  
18 infringement and just really show you on the verdict form --  
19 it's actually very straightforward for this question. The  
20 question is: Has Innovation Sciences proven, by a  
21 preponderance of the evidence -- and I want to talk about  
22 that a little bit -- that Amazon has infringed any of the  
23 asserted claims? And it's a yes-or-no question.

24 Now, preponderance of the evidence, I know or you may  
25 recall Judge Mazzant told you what that meant at the



1 beginning of the case and you -- I think Ms. Lisa Blue  
2 talked about that also during voir dire, that preponderance  
3 of the evidence is slightly more in favor of one party than  
4 the other. It's -- it's the most -- it's the smallest  
5 percentage in favor of one party or the other. That's the  
6 burden for Innovation to prove infringement.

7       You have to look at the evidence and tell yourself or  
8 ask yourself, who does the evidence favor, ever so slightly  
9 even? And that's the party that you should find in favor  
10 of. The preponderance of the evidence standard, we'll come  
11 back to that again, because that applies to other questions  
12 you're going to be asked to decide here as well.

13       So, I'm not going to go through this. Don't -- please  
14 don't be concerned. I'm going to -- I just wanted to remind  
15 you of some of the details that Mr. McAlexander went  
16 through. I picked -- I think this is the Echo 2 Plus  
17 product as compared to the '983 patent claim 22, and this is  
18 a claim that you've heard quite a lot about in this case.

19       And you remember that Mr. McAlexander put the claim  
20 language up and then on the right-hand side he would have  
21 some piece of evidence that he pointed to, to show you where  
22 in his view he found that claim element. In fact, in many  
23 of the situations there was multiple pieces of evidence,  
24 which I'm going to click through quickly here so we're not  
25 spending a lot of time on this.

1 But here is the -- you know, the first element, the  
2 input interface. The input into structure in the accused  
3 product, this was additional support for his input interface  
4 analysis.

5 Then he went to the next element, the decoder, and  
6 showed you where he found that, with secondary evidence  
7 supporting that analysis.

8 Then there was the network interface and he showed  
9 that.

10 Then he dealt with some of the "wherein" clauses and  
11 again pointed you to where that evidence was shown. And  
12 these are -- this is an Amazon document that we're looking  
13 at on the right-hand side here, and it's what we would  
14 commonly refer to as block diagram. It shows the different  
15 chips that they are using in their product, how those chips  
16 are interconnected, the signals that flow between the two.  
17 And so, he's relying on this information from Amazon in his  
18 analysis and ultimately in his conclusions.

19 This is the next to last "wherein" clause. This is the  
20 famous I guess we call it subparagraph F that has the  
21 short-range wireless communication language in it. And  
22 you've heard the witnesses talk about that at quite a bit of  
23 length.

24 And in the blue, that again was Judge Mazzant's  
25 construction of the term "an updated status of the item".

1 That's how Judge Mazzant said the parties have to construe  
2 that phrase, and that's going to be part of what you're  
3 going to get in the jury instructions. You're going to see  
4 Judge Mazzant's ruling as to the terms that he construed and  
5 the definition that he applied to those terms. So, this is  
6 just an example of that.

7 And, again, Mr. McAlexander also obviously pointed to  
8 evidence supporting his conclusion on those claim phrases,  
9 and I think there is one more -- one more part of the claim.  
10 Again, pointing again back to Amazon's broad diagram  
11 documents showing where he found that.

12 So, we asked Mr. McAlexander as part of his testimony,  
13 you know, how many instances -- if you break it down, how  
14 many instances of infringement did you find? And recall  
15 Mr. McAlexander testified even though he only presented to  
16 you one product as a sample from the Echo family and one  
17 from the Fire TV and one from the Fire Tablet family, that  
18 he had done the same analysis for all those products that he  
19 analyzed and confirmed that there were no material  
20 differences in the infringement analysis as to the way those  
21 products were structured or the way they operated.

22 And he chose this product, in the case of the Echo  
23 line, I think it was the Echo Plus 2, as the sample to  
24 explain to you the bases for his opinions.

25 But when you add in all those checkmarks up on that

1 slide that he had -- I think it was his Slide 12 -- it  
2 worked out to 137, 137 instances of the products infringing  
3 a particular claim. And when you break it down on a  
4 product-by-product basis, claim-by-claim basis, and you  
5 said, you know, in his view, yes, that infringes, yes, that  
6 infringes, yes, that infringes, that totaled 137. And this  
7 was his -- his blank chart where he started his analysis.

8 And then when he finished, those were the 137 instances  
9 of infringement that he found.

10 I mentioned the preponderance of evidence standard  
11 earlier. And, again, it's just basically ever so slightly  
12 in favor of one party versus another, and that's -- that's  
13 what you're going to be asked to decide.

14 Maybe I'm biased, but I think the evidence is more than  
15 ever so slightly in favor of Innovation. But that's all  
16 that you have to find. You can have doubts. You can have  
17 doubts going both ways. But if you find the greater weight  
18 of the evidence supports infringement -- and I respectfully  
19 submit that it does -- then you should find in Innovation's  
20 favor on that question.

21 You recall Judge Mazzant, in his preliminary  
22 instructions, told you it's as much as a feather weight  
23 difference in favor of one party or another. That's all it  
24 takes.

25 So, I mentioned there were different ways of

1 infringing, that a party can be found to infringe. I talked  
2 about direct infringement was the first example.

3 The second example is called induced infringement, and  
4 I've put up here on the screen part of the jury instruction  
5 that you're going to be given. I'm not going to go through  
6 this in great detail, and you should rely on the  
7 instruction, not what I tell you about what the standard is.

8 But essentially, in my mind, the way I think of it is,  
9 is did, in this case Amazon, induce other people, third  
10 parties, for example, or maybe even its customers, to  
11 infringe. The parties and the customers may not even be  
12 aware that they are infringing. But did they do something  
13 to encourage others to infringe the patents?

14 And, for example -- I'm going to go through some of the  
15 evidence, I think, supporting this.

16 You'll see here Mr. Aiken. He was one of the Amazon  
17 witnesses, and he talked about, in particular, this Alexa  
18 Connect Kit. And you may or may not remember. I'll remind  
19 you. You should, of course, rely on your own memory.

20 But the Alexa Connect Kit -- and this was presented by  
21 deposition. So, the Alexa Connect Kit was chipsets that  
22 were sold or I think he even testified sometimes they were  
23 given away, but they were provided to third-party  
24 manufacturers, let's say a printer manufacturer. And if the  
25 printer manufacturer chose to include those chips in its

1 products, then those products could be automatically  
2 configured to work with Alexa. All -- all that a purchaser  
3 of a printer would need to do is -- is --

4 Actually, a printer is probably a bad idea. I should  
5 have said maybe something like a door lock, you know, some  
6 sort of smart home device.

7 All that the -- the user would need to do is link that  
8 back to their user account, and then the door lock or  
9 whatever the device may be has the intelligence, the  
10 electronics already built into it, that it can be controlled  
11 from an Echo device or a Fire TV or Fire Tablet.

12 So, it's a way of encouraging third-party manufacturers  
13 to make and sell products that are specifically designed to  
14 work with Amazon's smart home ecosystem and -- and the  
15 ability to allow those devices to be managed from these  
16 accused products.

17 So, Mr. Aiken talked about the Alexa Connect Kit, and  
18 then separately he gave an example, Ring, which  
19 subsequently, I guess -- I don't know the timing exactly,  
20 but at some point recently was acquired by -- by Amazon, but  
21 prior to that it had been a third party. And they were --  
22 they were making products, their smart doorbells and -- with  
23 the cameras and so forth, and they were designing those to  
24 work with the Amazon ecosystem that allows the smart home  
25 control.

1           There are other examples, and I think there's probably  
2 many examples in the -- in the record, but I just pulled out  
3 this one example here.

4           Mr. C.J. Allen was another Amazon witness, and he  
5 testified about these various certification programs. One  
6 of them was called Works with Alexa, and another one is  
7 called Certified for Humans, and they are both very similar.

8           Certified by Humans allows for a device to  
9 automatically connect to your account so that you don't have  
10 to go through the process of manually linking it back to  
11 your account. If you purchase one of these products that's  
12 Certified for Human, you take it home, you turn it on.  
13 Assuming that you have the proper information stored in  
14 Amazon's cloud, Amazon's system will automatically link it  
15 to your account, and it will be up and running, and you  
16 don't have to go through a setup -- setup process. Very  
17 smart. You know, it encourages people to buy those  
18 products.

19           The Works with Alexa program, as I said, was very  
20 similar. It doesn't have the automatic setup feature, but  
21 it's been certified by Amazon to work with its Alexa  
22 ecosystem and, therefore, to be capable of being controlled  
23 as a smart home device from these accused products.

24           So, they are -- they're -- and these products typically  
25 are or almost exclusively, I suppose, made by third parties.

1 They're trying to encourage, again, these third-party  
2 manufacturers to make devices that can be integrated and  
3 used by customers in the Amazon ecosystem.

4 And this, frankly, touches on a little bit of what --  
5 about what Dr. Ikizler talked about earlier today. You  
6 know, Amazon wants to drive customers into its ecosystem as  
7 opposed to its competitors, competitors like Apple or  
8 Google. They would -- they would like to have the customers  
9 living, so to speak, in the Amazon ecosystem because they  
10 derive financial benefit down the road from those kind of --  
11 that -- that -- that engagement.

12 So, Mr. Allen talked about both of those programs. But  
13 the point of those programs, as I said, is to get more  
14 devices capable of working in the Alexa ecosystem and,  
15 therefore, being capable of being controlled by the smart  
16 home devices and driving customers, therefore, to that same  
17 ecosystem.

18 So, that was the point. So, they're encouraging --  
19 through the Works with Alexa system, they're encouraging end  
20 users to purchase devices that could be used with the Echo  
21 in a smart home environment.

22 The idea is, you know, if a customer looks at online --  
23 let's say you're on Amazon.com and you're looking for a  
24 smart doorbell, and one of them is certified as Works with  
25 Alexa, one of them is not, you may be more encouraged to buy



1 the one that's certified to work as Works with Alexa. And,  
2 so, they're -- they're encouraging you to buy that product,  
3 take it home, make it part of the system, and -- and use it  
4 in that system in an infringing manner, allowing you to use  
5 the Echo products and the Fire products in an infringing  
6 manner to control those devices.

7 Now, the third -- let me switch gears. The third type  
8 of infringement that you can have in a case like this is  
9 what's called "contributory infringement." And, again,  
10 you're going to be given a jury instruction on that, and you  
11 should follow that jury instruction. But essentially the  
12 idea behind contributory infringement is let's say that the  
13 claims cover a system.

14 Now, there's been debate, frankly, in this trial  
15 between our experts and Amazon's experts as to whether the  
16 claims cover just the Alexa -- or the Echo product or the  
17 Fire TV product or whether it requires other pieces.

18 And this kind of a situation, contributory  
19 infringement, as well as induced infringement, frankly, both  
20 can be applied in that situation where a claim covers a  
21 larger system, not just a -- an individual box or product.

22 But -- and, again, I'm just going to give you my sort  
23 of thrust of what this means. You should rely on the  
24 instruction. But I always think of it like a company sells  
25 a piece of a system, but that piece, that product, let's

1 say, is really designed to work as part of a larger system.  
2 It's not something that can be used in any other situation.  
3 It's -- it's really specifically tailored to be used in that  
4 environment.

5 And the idea is that your -- the company is selling  
6 that -- that product with the idea that it -- it knows that  
7 the customer is going to take that piece and put it together  
8 with other pieces that will end up constituting the entire  
9 system that's claimed.

10 And, so, it doesn't matter that they don't sell the  
11 entire system themselves. It's enough that they sell just  
12 the piece that's specifically designed to go into this --  
13 this larger system.

14 So, in that regard we had -- and, so, the idea is that  
15 this third party -- it could be a customer, could be a  
16 manufacturer, it doesn't matter. But there is some third  
17 party that's going to take the pieces and put it together.

18 So, you -- you also may recall that we had -- I think  
19 it was Mr. -- we actually had multiple witnesses. But  
20 Mr. Allen talked about Amazon selling bundled products. And  
21 I don't know if that was -- if you recall that or not, but  
22 basically they're selling one of these smart home products  
23 with something else. Maybe it's a Philips Hue light bulb or  
24 maybe a door lock. I don't, you know, remember if he gave  
25 specific examples.

1 But the idea is they will sell those products together.  
2 Maybe the combined price is lower. You're getting two for a  
3 lesser price than you would pay if you bought them  
4 individually. But why are they doing that? They're doing  
5 that because they know that you're going to take it home and  
6 you're going to connect it up to your -- your home wireless  
7 network, and you're going to be using the Echo device or the  
8 Fire device to control that light bulb. That's probably the  
9 reason why the customer bought that bundle.

10 So, here was some testimony from Mr. Allen on that  
11 point. He -- over on the left-hand side, he says, you know,  
12 I don't know if it's 100 percent of the time, but I'd say  
13 there's a high probability that you would be able to find a  
14 bundle from Amazon.

15 And then separately he talked about zero-touch setup.  
16 And this is similar or it's related, I guess, to the idea  
17 behind Certified with Humans. Zero-touch setup is this idea  
18 that you don't have to know how to actually integrate your  
19 smart home device into your network. If it's part of a  
20 zero -- if it works with a zero-touch setup capability, you  
21 bring the products home -- actually, I think this actually  
22 relates more to the Echo products, the Amazon products  
23 themselves. You bring the Amazon product home and you -- it  
24 will automatically join your wireless network. It will  
25 automatically connect itself to your Amazon account. So,

1 you don't have to go through the process of trying to do  
2 that, because I think we've all experienced situations where  
3 we've tried to, you know, install some new electronic device  
4 in our home and we can't make it work, for whatever reason.  
5 The instructions never seem to actually solve the problem.

6 Well, they've come up with a solution. And why have  
7 they come up with that solution? Again, it's designed to  
8 make it easier, to encourage customers to buy those  
9 products, bring them home, put them together in a bundled  
10 situation, put them together, for example, with other  
11 products so that even if you -- even if you say you've got  
12 to have the entire claimed system, they have that claimed  
13 system. They're encouraging their customers to do that.

14 Mr. Aiken -- I'm not going to read this to you here,  
15 but there was also testimony from Mr. Keith. He was -- I  
16 believe he was a vice-president at Amazon. He talked about  
17 the benefits of bundling up here at the top right-hand  
18 column, top right-hand column. He says -- he was asked  
19 what -- what's the benefit of bundling from your  
20 perspective? And he said to drive sales. Makes sense.

21 Mr. Aiken, again, was -- talked about -- talked about  
22 bundling the Show with the smart LED bulb, and he says the  
23 reason -- his understanding of the motivation for doing it  
24 was to offer customers an easy way to acquire functional --  
25 functionally-related products, in other words, products that

1 would work together. That was their goal.

2 So, you're going to be given instructions on the  
3 different types of infringement. And again, I've just  
4 summarized them here, but you will be -- Judge Mazzant will  
5 give you that orally here and then you will also have those  
6 instructions back in the jury -- in the jury room.

7 And the first question is infringement, and you're  
8 going to be asked did we prove infringement by a  
9 preponderance of the evidence. And if you agree with us  
10 that we have, then you're going to check yes and then you're  
11 going to go to the next question.

12 The next question is invalidity. I'm going to try to  
13 speed this up because I feel like I'm spending a lot of time  
14 on this.

15 But the next question is invalidity, and you're going  
16 to be asked to answer whether Amazon has proven whether each  
17 of the claims are invalid. And again, you'll notice at the  
18 very top it says: Did Amazon prove by clear and convincing  
19 evidence that the following claims of the asserted patents  
20 are invalid? And it will tell you what yes and no means.  
21 Yes means that you've proven it invalid. No means they have  
22 not proven it invalid by the clear and convincing evidence  
23 standard.

24 And you'll also remember that the primary -- in fact,  
25 really, the only prior art -- and I'm going to put that in

1 quotes, because we dispute whether it's prior art or not.  
2 But the only prior art that was presented to you from  
3 Dr. Johnson was this so-called HAL system, the system that  
4 he testified was put together in 2019.

5 Now, to be prior art, it has to -- it has to be  
6 something that was in existence prior to the first time the  
7 claims were filed in the Patent Office. So, you're going to  
8 be asked whether this system -- as part of your analysis,  
9 you have to determine for yourselves whether this system  
10 that Mr. Shriver and Dr. Johnson admitted was put together  
11 in 2019, whether that system or one like it existed,  
12 actually existed, prior to 2006 or 2007, which would be in  
13 the prior art time period. You've got to make that  
14 determination, and they've got to prove that by clear and  
15 convincing evidence.

16 We'll talk about clear and convincing evidence in just  
17 a minute, but it's their burden. They have to prove by that  
18 burden every aspect of invalidity. Just like we have to  
19 prove every aspect of infringement by the preponderance  
20 standard, they have to prove every aspect of invalidity by  
21 the clear and convincing evidence standard.

22 And one of those pieces, a major piece in this case, is  
23 whether this system ever actually existed. And we think the  
24 answer is very clear. It didn't.

25 Dr. Johnson was asked, on the right-hand column, about

1 he -- the "he" here in the question is Mr. Shriver -- and he  
2 did that at the request of the attorneys, right?

3 These were attorneys that helped him put together the  
4 system in 2019. This was done for purposes of litigation.  
5 This isn't a system that was found, you know, in someone's  
6 home being used and somebody said, hey, can we -- can we  
7 take pictures of that or study that or maybe buy it from you  
8 and use it? This was something that was put together for  
9 the purposes of the litigation.

10 So, you recall Mr. -- this is Mr. Shriver's testimony,  
11 and he was asked whether a system like that, the one here  
12 that is shown on the right with Dr. Johnson, whether a  
13 system like that with all the components and all the parts  
14 and that he invoiced the lawyers for to the tune of \$24,000,  
15 whether you'd -- I'm going to paraphrase -- whether he'd  
16 seen that type of system before. And he testified -- this  
17 is Mr. Shriver, who was the president of the company -- they  
18 are all so unique.

19 He's referring to the systems. It's not like -- it's  
20 like a snowflake. So, every one was unique. Every system  
21 was unique, in his view. There wasn't a common template.  
22 He's not saying that this system here that Mr. Johnson --  
23 Dr. Johnson is pictured with was some sort of a standard  
24 system that was normal out there. He said they're all  
25 unique.

1           Why? Because the customers could customize their  
2 system in their home however they wanted to. They were the  
3 ones that were responsible for putting the pieces together  
4 to work with the software that Mr. Shriver's company sold.  
5 At this time they only sold the software.

6           So, he was asked -- and, again, this is -- this is  
7 Mr. Shriver in his deposition that was played. He says --  
8 he was asked, well, can you tell me any customer that  
9 actually had the system in use at any time, 2006, 2007, or  
10 any time earlier than that?

11          Answer: No.

12          And then the next question on the screen is: Would you  
13 agree with me that there is nobody -- oh, sorry. This is  
14 Dr. Johnson. I didn't -- we didn't have the notes as to who  
15 was testifying here. I apologize.

16          This says: Would you agree with me that there is  
17 nobody more knowledgeable about the HAL system than  
18 Mr. Shriver?

19          Answer: I would assume that to be the case, yes.

20          So, Dr. Johnson didn't have any more personal knowledge  
21 about what the customers of HAL had in their systems way  
22 back in 2007, 2006, and earlier. He deferred to Mr. Shriver  
23 on that. And I think that's entirely appropriate.

24          But Mr. Shriver himself testified that he didn't know  
25 whether any customers had actually built that system, used



1 that system in their own homes in that same time period.

2 So, here he's -- so, as far as you know, I'm virtually  
3 positive, Mr. Shriver's testimony. As far as you know, you  
4 don't know if any customer has ever shipped a system that  
5 looks like this?

6 So, yeah, this is Mr. Shriver.

7 Answer: We don't -- in that timeframe we weren't  
8 selling turnkey systems. So we wouldn't sell a turnkey  
9 system. We would sell the software and the customer would  
10 configure it.

11 They sold the box. They sold the box with the discs.  
12 That's it. They didn't sell the entire system.

13 I mentioned the clear and convincing evidence standard.  
14 It's a different standard than the preponderance.  
15 Preponderance we talked about being ever so slightly in  
16 favor of one party or the other. Clear and convincing is a  
17 much higher standard.

18 At the end of this -- this is part of the instruction.  
19 You must be left with a clear conviction that the claims are  
20 invalid. That clear conviction standard, that's the  
21 standard by which you have to weigh the evidence. It's not  
22 that one is slightly more in favor of the other. You have  
23 to have a clear conviction that the evidence favors either  
24 Amazon or Innovation.

25 In this case we're talking about invalidity. It's

1 Amazon's burden to prove that by clear and convincing  
2 evidence. So, you have to find that Amazon has shown all of  
3 the pieces of its invalidity case by clear and convincing  
4 evidence; that is, you have to come away with a clear  
5 conviction that they are correct.

6 And I think Ms. Blue mentioned this in her voir dire as  
7 well. This is the same standard that the State of Texas  
8 uses when they ask a jury whether a child should be removed  
9 from its parents, taken out of the home. It's not a light  
10 standard. It's very significant.

11 Now, as I said, you know, every piece of the -- of the  
12 invalidity case has to be proven by clear and convincing  
13 evidence. The most important, in my mind at least, is  
14 whether this even qualifies as prior art. Did it actually  
15 exist?

16 But there are other pieces you're going to have to  
17 consider. You need to determine whether Amazon has shown --  
18 even if you assume this is prior art, you have to determine  
19 whether Amazon has shown by clear and convincing evidence  
20 that every element of the asserted claims is invalid in  
21 light of that system.

22 So, you first have to say yes to prior art. Secondly,  
23 you have to weigh the evidence as to each and every element  
24 and determine whether or not it is prior art. And only if  
25 you come away with a clear conviction that the evidence

1 supports Amazon can you reach that conclusion.

2 Now, I submit that the evidence shows that the system  
3 that Dr. Johnson -- that Amazon failed to show that the  
4 system Dr. Johnson tested ever existed in the prior art  
5 timeframe. I think we went through some of that testimony  
6 here.

7 It was Dr. Johnson, as I mentioned, working with  
8 lawyers to try to come up with a system, and they put  
9 together that system with pieces and parts.

10 And you heard testimony about how many hours even  
11 Mr. Shriver -- I think I said Dr. Johnson. I meant  
12 Mr. Shriver. Mr. Shriver worked with attorneys to put  
13 together that system. He spent well over 100 hours working  
14 to put that together, and he's the most knowledgeable person  
15 about those systems.

16 I submit that it is -- use your common sense. But it  
17 seems unlikely to me that anybody out there -- any user or  
18 purchaser of the HAL system would have put together that  
19 exact same system, given how much time it took Mr. Shriver  
20 to put that together.

21 So, let me show you a little bit about the -- these are  
22 the jury instructions on obviousness. There's -- you heard  
23 some testimony about this from the expert witnesses, the  
24 technical expert witnesses. There was anticipation and  
25 there was obviousness.

1           Anticipation is used when you can point to a single --  
2 let's say it's a patent, just take a concrete specific  
3 example, a typical example. You're using a particular  
4 patent as prior art to another patent. When you looked at  
5 that earlier patent and if you find all of the elements of  
6 the claim in that earlier patent in that one document,  
7 that's called anticipation. That earlier document totally  
8 discloses what came later in the later patent in those  
9 claims.

10           If you don't find that all of the elements are in that  
11 earlier document, you can still prove the claims of the  
12 later patent are invalid by looking to other references.  
13 Maybe it's a technical journal. Maybe it's another patent.  
14 Maybe it's some news article. You can look to something  
15 else. And then under the appropriate rules, which are going  
16 to be provided for you in the jury instructions, you can  
17 combine those pieces together to conclude that the claims  
18 are invalid.

19           But, as I said, the jury instruction provides the  
20 specific rules that you have to follow in order to do that.  
21 There's -- the case law as interpreted by the courts over  
22 the many years have said you can't just find pieces in  
23 multiple references and say, okay, that's enough. We've  
24 shown those claim elements are out there and, therefore, the  
25 patent is obvious or the claims are obvious. There has to

1 be a reason why a person of skill in the art back at the  
2 time of the invention would have been -- would have had a  
3 reason to combine those pieces together in a way that ended  
4 up resulting in the claimed invention or making that claimed  
5 invention obvious.

6 And, so, you're going to be given criteria and  
7 instructions on how to do that analysis, and I'm not going  
8 to spend a lot of time going through that here. But I just  
9 want you to remember that you do have to follow that  
10 process.

11 It's -- you heard from Dr. Johnson where Dr. Johnson  
12 talked about different concepts being in the prior art. He  
13 talked about ZigBee being in the prior art or WiFi or smart  
14 home. That isn't enough. You have to find, first of all,  
15 on an element-by-element basis. You have to take those  
16 individual paragraphs and find that each of those was in the  
17 prior art. And if it isn't all in one reference and you  
18 have to go to a different reference, you have to follow  
19 these guidelines and instructions on whether it would be  
20 appropriate to combine those references together.

21 And recall that the HAL system, which is really the --  
22 the only piece of prior art we're really dealing with -- he  
23 did point to a ZigBee specification for certain claims, and  
24 I'll set those to the side for now. But you'll recall that  
25 he -- this was a system, by their own admission, that they

1 put together.

2 So, he took multiple pieces of hardware, connected them  
3 with cables and whatever software he had to load on the  
4 computer to make all these things work. Well, all of those  
5 are individual components.

6 Mr. -- as Mr. Shriver testified, they didn't sell these  
7 turnkey systems. Turnkey system is something that you --  
8 you buy and you hook it up and it works. It's the complete  
9 system. They didn't sell those.

10 So, you had to have individual customers out there, or  
11 in terms of the analysis as to whether something is obvious  
12 or not, it had to be obvious to a person of skill -- what  
13 they call a person of skill in the art, that they would have  
14 put together all of these disparate pieces.

15 And Dr. Johnson didn't provide any analysis, any  
16 explanation of why a person of skill in the art would have  
17 gone through and pulled this type of camera in or that type  
18 of camera in or hooked it up in this way.

19 And, you know, he talked about writing rules in the  
20 software to make the HAL software send e-mail messages or  
21 notifications to the customers. He didn't provide you with  
22 any explanation of why a person of skill in the art back in  
23 the prior art timeframe would have done that.

24 Instead, you probably recall that he talked about how  
25 they used the claims as the -- as the guidepost -- my

1 word -- the guidepost by which they tried to assemble the  
2 system and then find the features.

3 Well, that's called hindsight, and that's improper  
4 under the guidance for finding something obvious. You're  
5 not supposed to take the patent, look at the claims, and  
6 then say can I find these claim elements in the prior art.  
7 That's -- that's forbidden. You're supposed to cast  
8 yourself back in time. It's a fictional analysis. But  
9 you're supposed to cast yourself back in time, put yourself  
10 in the shoes of a person that's skilled in the art at that  
11 time and say, okay, based on what I know, what would I have  
12 concluded would have been obvious? And if it isn't what's  
13 in the claims, then the claims are not obvious. That's --  
14 that's part of the analysis you're going to have to do.

15 Let me talk a little bit about written description.  
16 You've heard -- you've heard a fair amount about that today,  
17 and then I'm going to try to cut through these other  
18 questions as quickly as I can.

19 Written description -- Amazon argument -- argues that  
20 the claims that we're asserting here are -- are invalid  
21 because they failed to comply with what's called the written  
22 description requirement.

23 And, again, this is another -- because it's an  
24 invalidity challenge, they bear the burden of proving that  
25 defense by clear and convincing evidence, and we've talked

1 about that.

2 Their position is the -- the disclosure of the patent  
3 applications, the specification of the patents that have  
4 issued, they don't support those claims. And you're going  
5 to be instructed on the standards for what it means to --  
6 for a patent claim to not be supported by the specification  
7 appropriately.

8 But I want you to remember that, you know,  
9 Mr. McAlexander testified that Dr. Johnson had not performed  
10 the detailed element-by-element analysis.

11 This always has to be done on an element-by-element  
12 analysis, whether you're talking about infringement, whether  
13 you're talking about invalidity. You have to look at all of  
14 these claim elements on an element-by-element basis. It's  
15 not enough just to look and say conceptually was -- was  
16 ZigBee known or WiFi. You have to go through the claim  
17 elements. And Dr. Johnson simply didn't do that.

18 These are excerpts from Mr. McAlexander's testimony  
19 where he confirmed that.

20 And Amazon -- recall, Amazon didn't present any other  
21 evidence, any other evidence about whether the claims were  
22 supported or not. It was simply Dr. Johnson going through  
23 and talking about those concepts. He didn't -- he didn't  
24 put those claim elements up and explain why or where in the  
25 specification there was some discrepancy.



1           You also remember -- and I think this is getting to an  
2 important point. Mr. McAlexander testified that he had  
3 alternative dates where he thought that the claims from  
4 these later patents that we're dealing with were supported  
5 back in 2006 and 2007. And he had an early date, which I  
6 believe it was -- I think it was February 2006, and then he  
7 had later dates. One was, I think, February 2007 and the  
8 third one was May of 2007. And he talked about that in his  
9 report and he talked about that on the stand. And we -- I  
10 think I was the one that asked him, you know, apply a  
11 conservative -- conservative approach to your analysis.  
12 Under a conservative approach, that is, giving -- you know,  
13 giving the disclosure the least amount of deference, what  
14 would -- what would be the date you would say that these  
15 claims were supported? And he pointed to the May 2007 --  
16 the application was filed in May 2007 that issued. I think  
17 it was called the '733 patent.

18           And the reason -- his explanation, as you may recall,  
19 was because that application had Figures 1 through 16 at  
20 least in them. And Figure 16, we've shown you that figure  
21 on the -- on the board several times in the course of this  
22 case. But in his view, Figure 16 is -- if you had to pick  
23 one figure, it's the best overall description pictorially of  
24 the claimed -- I'm sorry -- the invented system, describes  
25 the different pieces of that whole system.

1 And he said, well, Figures 1 through 16, those were in  
2 that May 2007 application, so certainly by that point -- I'm  
3 giving Amazon's arguments maximum credit -- by May 2007 it  
4 was disclosed to the Patent Office.

5 THE COURTROOM DEPUTY: You have ten minutes.

6 MR. JACKSON: Thank you.

7 But one thing I want you to know when you look at that  
8 exhibit -- and you'll have that back in the -- in the jury  
9 room, that patent, it's the '733 patent. The patent number  
10 is up here at the top. You'll see it's filed May 22, 2007,  
11 but I also want you to notice -- and this is in -- on the  
12 face page of the patent. On the left-hand column it talks  
13 about whether it relates back or claims the benefit of other  
14 applications.

15 And you'll notice here at the bottom it also claims the  
16 benefit of this thing called the provisional application  
17 Number 60/899,037 filed on February 2, 2007.

18 And I tell you that because that February 2, 2000 (sic)  
19 date, that's an important date. And I'm going to ask you to  
20 remember it. Please remember February 2, 2007, because when  
21 you're asked to determine whether the claims that are  
22 asserted here comply with the written description  
23 requirement, you're going to be given two dates in that jury  
24 instruction. One is the August -- I think it's 10 -- 2006  
25 date that Amazon has focused on. The other is the February

1 2, 2007 date.

2 This application that Mr. McAlexander testified fully  
3 disclosed those invention claims benefit back to that  
4 February 2, 2007 date. So, please remember that.

5 Going back to -- this is the verdict form that you're  
6 going to be asked to fill out. And if you agree with  
7 Innovation that -- that Amazon has failed to meet its burden  
8 of proving these claims invalid, you're going to check these  
9 boxes "no" for each of the claims.

10 I'm going to, again, go quickly to the next question,  
11 patent eligibility. This is the form that you're going to  
12 be asked to -- to fill out for patent eligibility. And I  
13 want you to note up here at the very top, above that line,  
14 it says: This question relates to patent eligibility and is  
15 unrelated to Question 2, invalidity.

16 This question you're going to be asked to decide, but I  
17 want you to keep in mind it is unrelated to the question you  
18 just answered in Question 2. It does not relate to  
19 invalidity under Question 2.

20 And I'm just afraid that -- that because of the  
21 testimony that's been given, there may be confusion when you  
22 get back in the jury room about whether the question that  
23 you're going to be asked to decide under Question 3 relates  
24 to validity or not. And I'm telling you it does not, and  
25 you'll get the jury instructions that I think will make that

1 clear.

2 This question is whether a particular claim element  
3 individually or as an ordered combination -- and that's a  
4 fancy word for saying the claim as a whole -- whether those  
5 things were well-known, routine, and conventional. And I  
6 want to emphasize that again. It's well-known, routine, and  
7 conventional, not or conventional.

8 You're going to be deciding this question, because  
9 there may be other issues that Judge Mazzant has to decide  
10 and you're providing your -- your determination on this  
11 particular issue, but it does not relate to invalidity.

12 And I think you will hopefully remember  
13 Mr. McAlexander's testimony about whether things were  
14 well-known, routine, or not. And his testimony was that  
15 these things were not well-known, routine, and conventional.

16 You'll see in the patents there will be references to  
17 certain things that -- it will say such-and-such is  
18 conventional. But the standard is, is it well-known,  
19 routine and conventional. It's got to be all three. And I  
20 analogize it to be, you know, something that's well-known in  
21 whatever the particular subject matter area is. Some things  
22 may be, but you get to find that all of them are.

23 So, again, going back to the verdict form, if you agree  
24 with Innovation that Amazon has failed to prove -- and  
25 they've got to prove this, again, by clear and convincing

1 evidence. If they fail to prove it by clear and convincing  
2 evidence and you agree with Innovation, you will answer no,  
3 that Amazon has not shown that these claims constitute  
4 nothing more than well-known, routine, or -- and  
5 conventional elements.

6 So, let me move to damages, and I'm going to have to  
7 short-circuit this a little bit, and I think I can do that  
8 because of the testimony of Dr. Ikizler today. I listened  
9 to his testimony today, and I'll be totally honest with you.  
10 I am not the expert on the damages in this case, but his  
11 testimony today cleared up a lot of issues that I, honestly,  
12 had questions about, where the evidence was exactly. And I  
13 thought he did an excellent job of clarifying that not only  
14 in response to Mr. Berquist's questions but also in response  
15 to Mr. Dacus's questions.

16 So, this is the question you're going to be asked:  
17 What sum of money, if paid today, do you find Innovation  
18 Sciences has proven, by a preponderance of the evidence,  
19 would fairly and reasonably compensate Innovation Sciences  
20 for Amazon's infringement?

21 There is a lot of stuff packed in there. One of them  
22 is the preponderance of the evidence standard. And, again,  
23 you have to look at the evidence and say at least by the  
24 slight weight of the evidence, which side has prevailed in  
25 proving -- in proving the damages.

1           You'll write in a number. If you get to this question,  
2 if you've found that, you know, a claim is valid -- at least  
3 one claim is valid and at least one claim is infringed, you  
4 will be asked to determine damages. And in this blank you  
5 will simply write in the number that you feel the evidence  
6 has proven.

7           THE COURTROOM DEPUTY: You have five minutes.

8           MR. JACKSON: Thank you.

9           We talked about the preponderance of the evidence  
10 standard, a feather.

11          I want to try to touch a little bit on Amazon's  
12 business model. We talked about this. You've heard this.  
13 Their goal is to get customers in the door, get them  
14 involved in the Amazon ecosystem so that they -- their view  
15 is long-term. They are not looking at whether we make a ton  
16 of profit on the products sold today. They would rather  
17 have the long-term profits down the road, and that's why  
18 they view the profitability of products they sell today with  
19 an eye on the future.

20          And this is something that Dr. Ikizler talked about.  
21 He referred to the DSI, the DEV. There are different --  
22 different ways of looking at the profitability, but all of  
23 it referred to this concept that there is going to be  
24 downstream profits Amazon receives as a result of selling a  
25 product today.

1 And, so, the product today they may sell at very little  
2 or even a loss -- very little profit or even a loss. But  
3 that's not their goal. Their goal is to look down the line  
4 for the long-term and see whether they are going to make  
5 profit in the long-run. And that's why when they look at --  
6 when they assess whether they want to introduce a product  
7 into the market or not, in that BRD document you've heard so  
8 much about, they assess that long-term profitability. And  
9 if the numbers work out so that they've met whatever  
10 threshold profit it is long-term, that's one of the factors,  
11 they will decide to go forward with that product and  
12 introduce that product.

13 So, I'm going to skip ahead a little bit here. Let me  
14 try to clear this off the screen.

15 You heard from Dr. Ikizler. He talked about customer  
16 demand for smart home products. And I'm not going to  
17 reiterate all of his comments today, but you heard those  
18 earlier today about how he did that analysis.

19 I mentioned the BRD a moment ago. Well, in part of  
20 Amazon's assessment of whether to introduce a product or not  
21 is whether the product is going to help them differentiate  
22 themselves and their products from their competitors. Smart  
23 home is one of those criteria. In fact, this section --  
24 you'll see at the top it says top 3 to 5 differentiators  
25 plus customer benefits. Smart home makes that list.

1           This was the e-mail you've heard about. I'm not going  
2 to go through it in great detail, but this was the  
3 congratulations, they hit milestones for their smart home  
4 products, getting customers engaged on a smart home basis.  
5 It's important to Amazon. It's important to Amazon.

6           This is a timeline, and I show you this complete  
7 timeline which has a lot of information on it. But the  
8 point I want to make with this timeline is that since Amazon  
9 first introduced the home automation skills that allow smart  
10 home to actually work --

11           THE COURTROOM DEPUTY: Two minutes.

12           MR. JACKSON: Thank you.

13           -- they introduced 22 products. All 22 of those  
14 products Mr. McAlexander analyzed and found to be  
15 infringing.

16           You've heard about the sales -- total sales of the  
17 accused products. Dr. Ikizler went through that.  
18 \$4.7 billion and that's just from these dates coming  
19 forward.

20           These products are hugely successful. This is from  
21 Amazon's own documentation. To say that these products are  
22 not important or not successful is simply denying reality.

23           Dr. Ikizler, you've now heard from him a couple of  
24 times. Well-qualified. Well-qualified to provide the  
25 statistical and economic analysis that he's provided to you.



1 Amazon's own documents -- and on the left-hand side is  
2 testimony from -- I believe this was from Mr. Matsumoto  
3 about what DSI means, and he talked about this downstream  
4 profit that they are going to receive. This on the  
5 right-hand side is an excerpt from one of their BRDs where  
6 they are doing the calculation. And you'll see the \$9.37 is  
7 how much they expect to make in profit from the sale -- from  
8 the immediate sale of that product, but the three-year  
9 DSI -- this is at line 10 -- three-year DSI, in three years  
10 they expect to receive an additional \$76 in profit because  
11 that product was sold. And, so, when they assess the  
12 profitability of that product, Amazon says total profit --  
13 this is line 11 -- \$85.81.

14 Causally tied. This is important. There was a dispute  
15 between our expert and Amazon's expert as to whether that  
16 profit, that downstream profit, is tied to the sale of the  
17 accused product. This is from Amazon's own document. Their  
18 assessment is that those downstream sales are, in fact,  
19 causally tied. That is, one thing causes the other. The  
20 sale of the accused product causes that additional profit to  
21 be received.

22 THE COURTROOM DEPUTY: Your time is up.

23 MR. JACKSON: May I have another five to be deducted?

24 THE COURT: Oh, of course, yes.

25 MR. JACKSON: Thank you, Your Honor.

1           So, this is -- this is different. So, you talk -- I  
2 showed you the slide about the \$4.7 billion. That was the  
3 revenue of the accused products. This slide is showing you  
4 the \$2.4 billion in downstream profits that Amazon expects  
5 to make from -- based on the sales of the accused products.  
6 Mr. -- actually, Dr. Magee and Mr. Ikizler -- I think this  
7 analysis here is GP 13 -- Georgia-Pacific Factor 13, I think  
8 was Dr. Ikizler's analysis. I may be wrong on that.

9           Someone will correct me, I'm sure.

10          But they -- they analyzed the -- this is the  
11 apportionment methodology, which you've heard a lot about.  
12 There is a lot of debate over that. And this is the  
13 apportionment methodology in particular that Dr. Ikizler  
14 talked about, how he looked at the BRDs, that is, the  
15 feature sets that Amazon used to consider whether to  
16 introduce the products or not.

17          So, these were the features that they were interested  
18 in, and he went through and he analyzed those feature sets  
19 that they determined should be in the products and allocated  
20 a percentage of those features to the smart home technology.  
21 And, again, this is using the Amazon BRD.

22          He also did the Amazon customer reviews. So, these are  
23 reviews that -- that are provided to Amazon. This is --  
24 this is separate from the expert's analysis, which is down  
25 below, but -- so, these are actually reviews that are

1 provided to Amazon. And, again, he did the analysis about  
2 what percentage of those reviews related to the smart home.

3 Down below -- I'm going to touch on this quickly. This  
4 was the -- Dr. Simonson's supplemental report -- I'm sorry.  
5 This is Dr. Ikizler's supplemental report where he analyzed  
6 Dr. Simonson's survey results of 944 participants, where he  
7 concluded that between 10 and 12 percent of the respondents  
8 valued and sought the smart home technology in the Amazon  
9 products.

10 So, the result. Profitability times the apportionment,  
11 that's how he -- that's how the -- Dr. Magee and Dr. Ikizler  
12 come up with the damages in this case.

13 And, so, they took a range. They took, on the high  
14 end -- just to take the -- they took the largest number, and  
15 that's the one in green, 10.6 percent of the apportioned  
16 profits, and for the Fire HD 10, it was -- that was the low  
17 of 2.4 percent, and they did that for the three products,  
18 came up with these ranges.

19 And then Dr. Magee took those ranges and came up with  
20 the average apportioned profit, which was 6.4 percent. He  
21 then applied the Georgia-Pacific factors to adjust those  
22 numbers; that is, he looked at all the evidence, he went  
23 through the different factors that he's supposed to  
24 consider, and adjusted those numbers downward, and ended up  
25 for the Echo products at a 2.5 percent royalty rate and the

1 Fire products at 2.0 percent.

2 And when you include the total number of sales and --  
3 and do the math, that works out to be the equivalent of  
4 2.1 percent royalty rate for all accused products. And,  
5 again, that -- that is the \$100.7 million.

6 They also importantly determined that it was a running  
7 royalty analysis, not a lump sum. So, one of the questions  
8 you're going to be asked to decide is whether the amount of  
9 money -- if you get to this question -- whether the amount  
10 of money that you're awarding is a royalty or it's a lump  
11 sum. In other words, if it's a lump sum, Amazon has paid  
12 everything it ever has to pay for these patents. If it's a  
13 royalty, they pay on a product-by-product basis. That's the  
14 way you're calculating it from the past. That's the way  
15 you've done the analysis, did you look at it as being one  
16 lump sum or did you look at it as being a royalty.

17 And if you followed Dr. Ikizler and Dr. Magee's  
18 analysis, you will conclude that it's a -- it's a royalty.

19 What are we talking about in terms of -- you know, a  
20 hundred million dollars sounds like a huge number. It  
21 certainly is, certainly in my book. But it's only  
22 2.1 percent of the accused sales. Amazon gets the  
23 97.9 percent.

24 I'm going to skip the jury instructions which you'll --  
25 you'll receive on whether a license is comparable or not.

1 You know our position. The LG and Samsung licenses are not  
2 comparable for a number of reasons, which were explained  
3 yesterday.

4 Verdict form. This is where you're going to write in  
5 your damage amount.

6 The next question, is it a running royalty or lump sum.  
7 If you follow Dr. Ikizler and Dr. Magee, it will be a  
8 running royalty.

9 Willfulness. This question is whether -- you're going  
10 to be asked to determine whether Amazon's infringement --  
11 assuming you find infringement -- whether Amazon's  
12 infringement was willful, did they -- it's more than just  
13 did they accidentally infringe. Did they essentially intend  
14 to infringe once they learned about the patents, and we --  
15 we presented evidence -- first of all, this is the  
16 questionnaire, so you're going to be asked "yes" or "no" for  
17 each of the questions. It's a preponderance of the evidence  
18 standard.

19 And then you're going to be given a jury instruction as  
20 to what guidelines you're supposed to use to make that  
21 determination.

22 And we presented, for example, Mr. Torok's testimony  
23 here at trial where he talked about how Amazon was still  
24 working to introduce additional products and intending to  
25 develop newer versions of the products.

1           So, they're not changing their behavior. They haven't  
2 changed their behavior to design around the technology. I'm  
3 sure they'll tell you it's because they don't use the  
4 technology, but that's a question for you to decide. And  
5 they intend to continue doing so.

6           And, so, the question is, based on the evidence you've  
7 seen, does that constitute willful infringement or not? So,  
8 this will be the -- the question you'll be asked to answer.

9           And, again, if you agree with us that we think that the  
10 evidence does show willful infringement, you'll answer those  
11 questions "yes." Again, this is a preponderance of the  
12 evidence standard, so the feather. Think of the feather.

13           Thank you very much. I appreciate your time. Thank  
14 you for serving on this jury. We -- we truly appreciate it.

15           THE COURT: Thank you, Mr. Jackson.

16           Closing argument by Amazon, Mr. Hadden?

17           MR. HADDEN: Good morning. First, please don't be  
18 disappointed that it's me up here. You will hear more from  
19 Mr. Dacus. I'm going to start the discussion this morning, and  
20 then Mr. Dacus will finish for us.

21           This is the first chance I've had to speak with you  
22 directly, so I do want to thank you for your service. These  
23 are difficult times, and you have all made sacrifices to be  
24 here, away from family and work, and we appreciate that.

25           Beyond that, I have to tell you, from your questions to

1 Judge Mazzant, you are the most engaged, attentive jury I  
2 have ever had the pleasure of being in front of. You are  
3 thinking hard about the issues in this case. And to me and  
4 to Amazon, that's all we can ask. I appreciate that.

5 Now, our patent system, the purpose for our patent  
6 system -- and it is our patent system. It's owned by the  
7 citizens, you and me. The purpose of our patent system is  
8 not to print patents. It's not to print lottery tickets.  
9 It's not to generate lawsuits. Our patent system has a very  
10 specific purpose --

11 We need to switch. Thank you.

12 The patent system has a very specific purpose, and it  
13 goes back to the founding of our country, and you may  
14 remember this from the patent video. The specific purpose  
15 of our patent system is to promote progress of science and  
16 useful arts.

17 "Useful arts" is kind of an old-fashioned phrase.  
18 Today we would say "technology." But the sole purpose and  
19 the only reason that the founders of this country came up  
20 with the idea of having patents was to promote science and  
21 technology.

22 So, that basic fundamental purpose, I think, is a  
23 critical lens for you to use to view the evidence and facts  
24 in this case.

25 So, what are those facts? Well, we really have two

1 timelines. The first timeline begins in 1994 when  
2 Mr. Bezos, in that garage you saw, had the idea of selling  
3 books online, a wild idea at the time when the Internet was  
4 just starting, an idea that proved hugely successful. And  
5 you know that Amazon became what Amazon is today, probably  
6 the leading technology company in the world.

7 The next point on our timeline involves Mr. Shriver.  
8 Unfortunately, Mr. Shriver couldn't be here to testify. But  
9 in 1997 he founded his own business, Home Automation Living.  
10 And he had sold an earlier business that involved automating  
11 news television stations, and he decided he was going to do  
12 another business and start again, automating homes. And he  
13 built what I think is a remarkable product, and you saw it  
14 demonstrated both on the Oprah Winfrey Show and through  
15 various videos.

16 And he built that product himself. He didn't just draw  
17 pictures on paper. He went to work. He wrote software  
18 code. He created a product. He worked with the sellers of  
19 those components, those cameras and smart light bulbs and  
20 switches so that they would inter-operate with the software  
21 that he was selling his customers.

22 And as you heard in his video deposition, he did  
23 everything, right? He was the CEO. He was writing the  
24 software. He was answering the phones, answering the  
25 customers' questions. That's what people who are running



1 their own business have to do, and he did it. And his  
2 company succeeded.

3 And he had an invention. You saw the invention. It  
4 was in the box that Professor Johnson held up. It was an  
5 invention that was being used by real people in the real  
6 world to improve their lives.

7 Now, Mr. Shriver chose not to file patents on his  
8 invention. That doesn't mean he didn't have an invention.  
9 He had an invention. It was widely known. It was  
10 successful, as you saw it featured on the Oprah Winfrey Show  
11 in 2000. It was a real thing. It wasn't drawings on paper.  
12 He built it. It was an invention. He had it.

13 Now we skip forward to 2011. By that point Mr. Torok,  
14 who is working as a software engineer at Amazon -- as you  
15 heard, he had been working on this incredibly complicated  
16 software that would tell you when your package would be  
17 delivered within, you know, the range of minutes and doing  
18 it, you know, millions of times a minute for every customer  
19 at Amazon. That's what he had been doing.

20 And in 2011 he gets approached to join a secret team to  
21 develop a new product at Amazon, and when he joins that  
22 team, he is the seventh member of the team. And what is the  
23 project? It's almost ludicrously ambitious. Right? To  
24 build a smart speaker that you can talk to and that would  
25 intelligently respond to what you said. That was the goal.

1 As Mr. Torok said, it sounded like something from Star Trek.

2 So, what did he say? Of course I want to do that.

3 So, he joined the team, and they worked very hard.

4 Right? And one of the first things they figured out was

5 that to do that, to build that intelligent speaker that you

6 could talk to and that would respond back, the intelligence

7 couldn't be in the device. It was just -- it would be

8 impossible. The intelligence would have to be in the cloud

9 on those thousands of servers running that artificial

10 intelligence technology that he and his colleagues were to

11 develop.

12 So, the key insight was there had to be a division of

13 labor. The device itself, as he explained, had to be dumb.

14 It just had to have good ears. And they developed a device

15 that did just that. So, some of his colleagues worked on

16 the ears, right? That is that array of microphones that you

17 heard discussed that would sense who was talking in the room

18 and point their ears, the microphones, at that person. So,

19 the only thing the device would have to do to have good ears

20 would be to hear what the person who was intending to speak

21 to the device said, and listen for that wake word, "Alexa",

22 so it could wake up and start listening. That's what the

23 device did.

24 And the beauty of that design was that all of the

25 intelligence being in the cloud, the device could stay the

1 same and the service could continue to grow.

2 And at first none of this worked, of course, because it  
3 was hard. But they worked and the engineers who were  
4 developing the ears got the microphones to work better and  
5 the engineers who were working with Mr. Torok developing the  
6 brain got those neural networks to work better, after  
7 millions of hours of training.

8 Mr. Torok himself wrote the orchestrator, the thing  
9 that held it all together, this DEESOS that would allow the  
10 information, the audio signals coming up from all those  
11 millions of devices to be properly routed through that  
12 automated speech recognition, natural language understanding  
13 technology that his colleagues were developing, so it  
14 ultimately sent the right skill to handle the request.

15 So, they worked and they worked. Thousands -- hundreds  
16 at first and then thousands of the world's leading  
17 scientists and engineers joined their project; and by  
18 November 6, 2014, they launched Alexa and the first Echo  
19 product.

20 And if you just stop and think about it, was there ever  
21 even a thing called a smart speaker before then? There  
22 wasn't. Mr. Torok and his colleagues created an entirely  
23 new category of product that we now almost take for granted.

24 But in 2011, it was a pipe dream, right? It was Star  
25 Trek, but they made it happen.

1           And they didn't stop there. They continued. How can  
2 we make it better? So, in 2015 -- between 2014 and 2015  
3 Mr. Torok joined the smart home team. And the idea was --  
4 of course, Amazon didn't invent smart home technology. As  
5 we saw from Professor Johnson, you could say it goes back to  
6 the 1960s and Mr. Sutherland in the basement with a giant  
7 computer.

8           But as Mr. Torok explained, smart home technology that  
9 you have to control with your phone, right? If you have to  
10 take your phone out, pick an app, slide a button, that's not  
11 really any easier than getting up and flipping the switch.  
12 The benefit, the magic of a smart home, is that you can have  
13 things happen based on what you say.

14           And it's interesting, right? Mr. Shriver had the same  
15 insight, right? Back in 1997. And we saw those three  
16 videos where he could say turn on the light, Rosy, or -- he  
17 even had one where he started his car. Start my Suburban,  
18 Rosy. So, he had the same basic idea that if you're going  
19 to make smart homes useful and appealing and something that  
20 people are really going to want in their home, it has to be  
21 controlled by your voice.

22           Mr. Torok didn't just have that naked idea, right? Not  
23 just the idea that, gee whiz, it would be cool to do it with  
24 my voice. He had a specific solution for making that work  
25 in the context of the entire Alexa system that he and his

1 colleagues had developed.

2 In fact, he filed a patent on it, and as we heard from  
3 Mr. Torok, this is just one of his 16 or 17 -- I forgot how  
4 many puzzle pieces he has, but he has on that order of  
5 patents, and he got them all by working for Amazon.

6 The important thing about this patent is that it  
7 describes exactly what IS is accusing in this case. So,  
8 what does this patent describe? It describes speaking a  
9 command, like turn on the desk lamp. Having that be  
10 received by a product, like an Echo, that can hear what you  
11 say, having that video -- or that audio recording your voice  
12 sent up through these arrows to this cloud where first --  
13 and I have the order wrong here -- but first, it is received  
14 by this orchestrater component 126.

15 Now, that is the DEESOS, that funny-named system that  
16 Mr. Torok worked on when he first joined Alexa. That is his  
17 DEESOS solution, the orchestra.

18 So, it receives the recorded sound wave. It then sends  
19 it to this box, speech processing module. And that is the  
20 combination of that automatic speech recognition and natural  
21 language understanding software that Mr. Torok told you  
22 about. That's where Alexa figures out the words that you  
23 said and what you meant by them, what your intent was.

24 And then the system is -- in his invention would send  
25 them to this thing that is described in the patent as the

1 secondary device drivers. And if you heard Mr. Torok when  
2 he testified, he said that was internal -- the technical  
3 name he used to describe what later became skills.

4 So, the idea that Mr. Torok had and that the Patent  
5 Office granted him a patent on was exactly this idea where  
6 you have a device that records the sound of the user's  
7 voice, it sends it over the Internet to a cloud where the  
8 sounds are interpreted by first the automatic speech  
9 recognition and then the natural language understanding to  
10 determine what the user wants, right?

11 What the user wants is not determined at the device.  
12 The device can't do that. It's just the ears. It's  
13 determined in the cloud.

14 And then once what the user wants is determined, it's  
15 handed off to something else, and that is this secondary  
16 device driver or skill. And the reason for doing that is  
17 Alexa is really good at understanding what you said. That's  
18 what all of those scientists were working on. But when it  
19 comes to turning on a light, or delivering a pizza, or  
20 getting you a ride or all the now hundreds of thousands of  
21 things that you can do using Alexa, Amazon is not the expert  
22 on that. Right?

23 If you want to turn on a light to go to your Philips  
24 light, Philips knows how to do that. So, the system would  
25 send the intent, what the user wants, to the person who is

1 best able to fulfill it. And if it's turning on a Philips  
2 light, that would be Philips. If it's ordering --  
3 delivering a pizza, that may be Domino's. But that was the  
4 beauty of the system. All the device has to do is record  
5 your voice and send it off. Alexa does the hard work of  
6 figuring out what you said and what you want, and then the  
7 person, the company that can do what you want does it.

8 And that idea has allowed Alexa to grow exponentially.  
9 So, as Mr. Torok explained, there are now over a hundred  
10 thousand skills offered for free, and Amazon allows all  
11 these companies to use all of that Alexa artificial  
12 intelligence to understand what the users said and what they  
13 want. And they just pass that intent on to these other  
14 companies who can do what the users want.

15 So if you want Elmo to read your child a bedtime story,  
16 you can. Amazon doesn't read the bedtime story; Sesame  
17 Street does. Or if you want to hear the weather, the  
18 Weather Channel will give you the weather. Amazon doesn't  
19 know the weather; the Weather Channel does. So, that is the  
20 beauty of the system that Mr. Torok and his colleagues  
21 developed and invented.

22 And to be clear, to go back to the patent, this is the  
23 patent that Mr. Torok got. The Patent Office allowed that  
24 patent covering this very invention that is being accused in  
25 this case. They allowed that patent and issued it to Amazon

1 over the very same patent applications that were in the  
2 Patent Office that they were aware of from Anne Wong.

3 The Patent Office looked at Anne Wong's disclosures.  
4 They looked at Figure 16. They looked at all of that that  
5 you've seen and said, no, that is not Mr. Torok's invention.  
6 So, Mr. Torok got his patent.

7 As we said, that is, I think, one of 16 patents.  
8 Amazon altogether has gotten over 400 patents on Alexa. And  
9 importantly, we're not the ones who are bringing people into  
10 court. Mr. Torok hasn't sued anybody's patents. Amazon has  
11 never sued anybody on any of those 400 patents. In fact,  
12 Amazon hasn't sued anybody on a patent in over 20 years.  
13 Amazon gets its patents to protect the innovations of its  
14 engineers.

15 The other thing Amazon does is to publish the results  
16 that its engineers discover. All right. So, let's go back.  
17 What is the purpose of the patent system? It's to put --  
18 expand our knowledge, improve our technology. Amazon did  
19 that. They did that by developing truly remarkable  
20 technology. They got 400 patents on it. Those patents  
21 describe in detail, as Mr. Torok's patent did, their  
22 specific solutions that move technology forward.

23 In addition to that, they publish hundreds and hundreds  
24 of cutting-edge research papers on the technology and the  
25 lessons they've learned. And they do that so that other



1 companies, other universities can use that information and  
2 build farther.

3 So, that's one timeline. Let's look at the second  
4 timeline.

5 The second timeline begins in December 10th, 2005, when  
6 Anne Wong sends an e-mail to her brother Ronald attaching a  
7 draft patent -- diaper patent. And this is the figure,  
8 right? And the idea is simple enough. You have some  
9 detector in the diaper. When the baby wets the diaper, this  
10 detector notices it, sends this lightning bolt to this  
11 little box with an antenna. The little box with the antenna  
12 sends a notification to the computer. And, aha, the  
13 caregiver learns that the diaper is wet. That was an  
14 invention. Three boxes, four arrows, and a cartoon.

15 And does -- what does the e-mail say? It's probably as  
16 interesting as the patent. The e-mail says: Shall we file  
17 now? Or when? We can file provisionals, one patent in a  
18 series one year adding new features.

19 So, what was the idea? They file a patent to try to  
20 get their stake in the sand saying this is the date I  
21 invented everything, and then they add to it.

22 And how did they add to it? Well, we know that, too,  
23 from another e-mail. They add to it by looking at what  
24 other companies are actually doing.

25 So, here's an e-mail from Ronald Wang to Anne Wong and

1 their collaborator. And it says: Think about hardly how to  
2 make our payment method patentable based on the current  
3 markets of Google, eBay, Chase Paymentech, et cetera.

4 So, look at what companies like Google, eBay, and Chase  
5 are currently doing and see if we can add that to our  
6 patent.

7 And, in fact, that's exactly what they did. So,  
8 August 10th, 2006, they file an updated version of their  
9 diaper patent, and this is Defendant's 162. And we haven't  
10 talked a lot about the payment idea in this patent, but if  
11 you look at Figure 4 when you are in the jury room, you will  
12 see that, true to their promise, they looked at what the  
13 payment companies were doing and added a chunk of the patent  
14 about payment technology. They looked at what people were  
15 doing, they added it to their patent, and they filed it.

16 And then they started suing people. So, they sued  
17 Samsung, and you saw the settlement. There was a license.  
18 Samsung, a Korean company, paid a relatively small amount to  
19 get rid of that litigation.

20 And then Anne Wong starts watching what Amazon was  
21 doing. She buys a Fire Stick. She gets an e-mail from  
22 Amazon announcing that the Fire Stick will now be supporting  
23 Alexa. It's got a -- another description of the Echo. And,  
24 so, she moves on.

25 She files another lawsuit against another Korean

1 company, LG. That lawsuit settles for much less than the  
2 cost of what these lawsuits cost to litigate.

3 And after she learns about the Echo and the ability to  
4 use Alexa with a Fire TV, she files three more patents, in  
5 2016, 2017, and 2017.

6 Now -- and then she comes to court and sues Amazon  
7 asking for a hundred million dollars.

8 Now, if you look at this picture, and if you put it  
9 next to the other timeline, you will see what I think  
10 everyone, including during jury selection, recognized. How  
11 can you possibly file a patent in 2016 and 2017 that covers  
12 a product that was in the market in 2014? So, that posed a  
13 problem.

14 So, what they did -- and they didn't do this in front  
15 of the Patent Office. Anne Wong did not tell the Patent  
16 Office when she filed these patents in 2017 that I'm really  
17 claiming an invention that I described back in 2006. She  
18 made that claim for the first time in this courthouse in  
19 front of you, and you saw it in the opening slides. They  
20 put up that date, that August 10th, 2006 date, and said  
21 that's her invention. That claim had never been made in the  
22 Patent Office; it was made to you.

23 The other thing that you should note is during this, I  
24 guess, 13-year period between the first diaper patent  
25 drawing and this lawsuit, Anne Wong and her company did not

1 make any products. They did not provide any services. They  
2 did not have any customers. They did not publish any  
3 technical articles. They did nothing but file patent after  
4 patent and lawsuit after lawsuit.

5 So, the question is, can you do that? Can you really  
6 do that? Can you watch what other companies are doing,  
7 companies that were investing lots of money, millions of  
8 hours developing cutting-edge products, file a patent on it,  
9 and then claim a hundred million dollars? Well, you can't,  
10 luckily, and you can't for at least three reasons.

11 The first reason is if you're going to try to do that,  
12 you've got to show clearly that you really had your  
13 invention, you really had the claims you're asserting back  
14 when you put your stake in the sand, when you had that  
15 priority date of August 10th, 2006.

16 And just to be clear, you will see in the jury  
17 instruction that that August 10th, 2006 date is the priority  
18 date that is being claimed in this case.

19 So, you heard some talk from Mr. McAlexander about a  
20 May 2000 application. None of that matters. Whatever is in  
21 that May date patent doesn't matter. The only thing that  
22 matters and the only question is whether this August 10th,  
23 2006 priority application or -- and we'll get to this --  
24 they mention now another date, February 2006. But we'll get  
25 to that.

1           So, let's start with the August 10th, 2006, patent  
2 application. Now, you heard Mr. McAlexander just yesterday  
3 on the stand testifying about this and he couldn't have been  
4 clearer.

5           Is there any description of a video decompressing or  
6 encoding in this document? No.

7           So, that was their stake in the sand document. It has  
8 to have everything that the claims require. Every claim  
9 that is asserted in this case requires decoding some signal,  
10 encoding some signal, decompressing a signal. All of these  
11 claims require it. Most of them are specific that it has to  
12 be a video signal. But whether it's video or audio, the  
13 words "decompressing" or "decoding" do not appear in that  
14 2006 application.

15           Other of the claims in this case require this  
16 management control system. That was that thing you saw in  
17 Figure 16. Again, Figure 16 is not in this patent, and as  
18 Mr. McAlexander acknowledged, there is no management control  
19 system anywhere in this patent. That was added later,  
20 another one of the things they added later.

21           Professor Johnson went through this in detail. It is  
22 kind of visually obvious here. There are eight figures in  
23 the August 2006 patent. The patents they are asserting now  
24 where they say are 32 figures or 33 figures, they don't  
25 match up.

1 And as Professor Johnson explained, right, these  
2 patents are this combination. They have this video  
3 processing chunk. They have this updated status chunk that  
4 came from the diaper patent. The whole top half of the  
5 claim, the video part, is nowhere described in that  
6 August 10th, 2006 diaper patent.

7 And you will see when you get the Court's instructions  
8 that the written description requirement is a strenuous one,  
9 right? The question is not whether you had a wish or plan  
10 for including the claimed inventions. You have to  
11 adequately describe it, and that means that the  
12 specifications must describe the full scope of the claimed  
13 invention, including each element thereof, either expressly  
14 or inherently.

15 Mr. McAlexander admitted yesterday on the stand that's  
16 not the case.

17 Now, I mentioned this February 2nd, 2007 application.  
18 So, when you get the Court's written description  
19 requirement, you will see that there are two dates. The  
20 first date is the priority date, this August 10th, 2006  
21 application, which the Plaintiff put up on their opening  
22 slide and which we talked about extensively.

23 The second date is February 2nd, 2007, and that states  
24 a provisional application. That's not a real patent  
25 application. It's what you can file before you file a real

1 one. You have never seen that provisional application. IS  
2 never showed it to you.

3 The priority date is 2006. We dealt with that  
4 application.

5 But that February 2nd, 2007, application is not in  
6 evidence. You will not see it. You have never seen it.  
7 Mr. McAlexander didn't show it to you.

8 What Mr. McAlexander showed to you and talked about was  
9 another application from May 22nd, 2007. That application  
10 doesn't matter. You can't -- even if it had the invention,  
11 you can't look at that for the required written description,  
12 as the Court will tell you.

13 So, when you get to the question -- and this is a  
14 crucial question, right? Written description sounds like a  
15 technical term, but think about what it means. It means did  
16 Anne Wong have the invention in her possession back when she  
17 filed that initial diaper application, or did she add to it  
18 after that date. Did she enhance it after seeing what other  
19 companies, like Amazon, were doing and after she saw that  
20 the Echo was in the market and that the Alexa service was in  
21 the market and that customers could now use Alexa to control  
22 their smart home devices? Did she add -- did she change her  
23 claims in any way after that date?

24 Because if she did, her patents are invalid. And  
25 they're not invalid because of anything the Patent Office

1 did wrong. The Patent Office may have done everything  
2 right. They are invalid because of the position she has  
3 taken in this litigation to claim that, in fact, her  
4 inventions go back farther than they actually do.

5 That will be for you to decide.

6 Now, the other reason why what is happening here is not  
7 allowed by the law and it cannot happen is that even in 2016  
8 and 2017 when Anne Wong filed the new patents with the new  
9 claims, she could only put together the building blocks of  
10 what she had described in some of those other applications  
11 that she had filed between 2006 and 2017. And nowhere in  
12 any of those applications did she describe anything that  
13 looks like Alexa.

14 So, what did she describe? Well, we had the diaper  
15 patent and then we had this video conversion patent that  
16 Mr. -- Professor Johnson talked about. And, so, her final  
17 claims are this kind of weird munging of video conversion  
18 with this diaper status update idea. And she put those  
19 together, but that doesn't get you Alexa.

20 And the fundamental reason why it doesn't get you Alexa  
21 is that the defining feature of Alexa is understanding what  
22 you say and doing something in response.

23 But as even IS and Mr. McAlexander acknowledge, there  
24 is no description of that technology in her patents. Right?  
25 They tell you over and over again, they have -- there is no



1 voice technology in these patents. They didn't claim any  
2 speech recognition technology. They didn't claim any  
3 natural language understanding technology. They didn't  
4 claim any artificial intelligence technology, because Anne  
5 Wong didn't have any of that and she didn't describe it in  
6 her patent.

7 But the truly bizarre thing, to me, about this case is  
8 that that is what they are accusing. They are accusing your  
9 ability to say something to an Echo or other device and have  
10 the device recognize the wake word "Alexa" and send what you  
11 said, the recording of that sound, off to the cloud to do  
12 something with it. And that -- those steps are nowhere in  
13 any of her patents.

14 Now, Mr. McAlexander got up here and said the claims  
15 define the claims. It doesn't matter what the invention is.  
16 Well, ladies and gentlemen, does that make sense? Patents  
17 are about inventions. You can claim what you invented. You  
18 can't claim anything else. And she did not invent what she  
19 is accusing in this case, because it is all about your  
20 voice. There is nothing in these patents about your voice.

21 As Mr. Torok explained, the Echo, Fire TV, the Fire  
22 Tablet, the way they interact with Alexa is that they are  
23 Alexa's ears. There's no ears in her patent. There's no  
24 need for ears in any of her patents because none of her  
25 patents are aimed at the problem that Alexa solves, which is

1 understanding what you said and interpreting it and doing  
2 what you asked.

3 And this is Mr. Torok explaining a major point, that  
4 these devices are not the brains; they are the ears.

5 Now, Mr. McAlexander talked a lot about these devices  
6 are configured to do this or configured to do that. But, in  
7 fact, as we heard, Mr. McAlexander did not even bother to  
8 look at the computer code in these devices to see what they  
9 are actually configured to do. You can't understand what a  
10 product that has a processor like a Echo or a Fire TV is by  
11 taking off the lid. That's like saying I can take off the  
12 back of my television and now I understand how it works.  
13 No. You have to look at the source code, the software that  
14 actually causes the device to do what it does.

15 Mr. McAlexander did not even bother to try.

16 So, what do the devices do? Well, as we heard, what  
17 the devices do are very simple. They listen for the wake  
18 word "Alexa." They record what you say after that word.  
19 They digitize it, and they send it out over WiFi to your  
20 router. That, as far as what is accused in this case, is  
21 all the devices do.

22 And it doesn't fit the claim for the very basic reason.  
23 If you look at this Element F that we've talked a lot about,  
24 it requires that one thing is done in connection with  
25 another thing. And the first thing, the thing that is done,

1 is sending your recorded voice over WiFi. That is what  
2 Mr. McAlexander says is the communication, through the  
3 network communication channel, information for managing an  
4 item status of an item. That is, sending your recorded  
5 voice, what you say after the word "Alexa" over WiFi.  
6 Right?

7 But it is undisputed that that was not done in  
8 connection with a short-range wireless communication  
9 regarding an updated status of the item. It is undisputed  
10 that your voice is only sent to the cloud in connection with  
11 one of two things. If you have an Echo, it is when you say  
12 the word "Alexa." If you have a Fire TV Stick, it is when  
13 you push the microphone button. Nothing else.

14 Professor Johnson explained this, right? I asked him,  
15 if what you say is correct, that when the Echo sends your  
16 recorded voice, it is only in connection with the wake word  
17 and not a short-range wireless communication. Can the jury  
18 find, just based on that one fact alone, that none of these  
19 patents are infringed?

20 He said: None of the claims in any of the asserted  
21 patents would be infringed by just that one reason.

22 So, because Alexa does what it does, it acts as a pair  
23 of ears, which is nowhere described in these patents. It  
24 cannot infringe.

25 And, in fact, after some wrestling, Mr. McAlexander

1 agreed. He says: So, when the device records yours or the  
2 user's voice, digitizes it, and sends it over WiFi to the  
3 wireless router, that is only done in connection with the  
4 user pushing a button or saying the word "Alexa," right"?

5 And he says: For that particular initiation, that is  
6 correct.

7 Now, just think about this admission for a second. The  
8 claim requires that voice is sent in connection with a  
9 short-range wireless signal.

10 Mr. McAlexander acknowledged in this testimony that  
11 that is not the case, that it is only sent in connection  
12 with the wake word "Alexa" or pushing the button. So,  
13 Amazon cannot infringe.

14 So, why are we still here? Well, we're still here  
15 because Mr. McAlexander did not follow the claim when he  
16 testified in front of you. So, if we start with  
17 Mr. McAlexander's testimony, so, he says when he's accusing  
18 all of the devices, when he's going through this particular  
19 claim element for each device, he says the same thing. He  
20 says: Information for managing an item status of an item  
21 regarding an updated status of the item -- so that means  
22 turn on the light -- in connection with a short-range  
23 wireless communication.

24 But as you know, as the Court will instruct you and as  
25 Mr. McAlexander himself acknowledged, the claim language is

1 what matters. You have to do precisely what the claim  
2 requires, right? And what did he do? Well, he rearranged  
3 what the claim says. So, let's look at this.

4 There are three things that are highlighted in  
5 different colors. The first one is information for managing  
6 an item status of an item. Everybody agrees that in the  
7 allegations in this case that is you saying, "turn on the  
8 light."

9 The next step is what it has to be in connection with,  
10 and it has to be in connection with the short-range wireless  
11 communication, not the wake word, not pushing the button.

12 And then that short-range wireless communication has to  
13 be regarding an updated status of the item. You have to  
14 have some item status update, right? And then you have to  
15 have a short-range communication, and then you have to  
16 communicate information about it.

17 What did Mr. McAlexander do? He arrange -- rearranged  
18 the pieces. He says the information to manage the item's  
19 status, which is in turn -- which is -- sorry. Let me go  
20 back.

21 He says: Information for managing an item status of an  
22 item regarding an updated status of the item.

23 But that's not what the claim says. The "regarding an  
24 updated status of the item" is a modifier of the "in  
25 connection with a short-range wireless communication." And

1 the "information for managing" is in connection with "the  
2 short-range wireless communication," not the turning on the  
3 light.

4 So, Mr. McAlexander just took the claim and rearranged  
5 it in a different way so that he could say that the  
6 communication didn't -- the communication, the user saying  
7 "turn on the light" and sending it out over WiFi did not  
8 have to be in connection with the short-range wireless  
9 communication. But that's exactly what the claim actually  
10 says.

11 And this wasn't just one time in which Mr. McAlexander  
12 made a mistake or misspoke. He did the same thing time  
13 after time after time every time he discussed this element  
14 in front of the jury, in front of you.

15 So, if we look at what the claim actually says and what  
16 Mr. McAlexander and Professor Johnson agreed the device  
17 actually does, there cannot be any infringement.

18 The other issue that came up is this ordering, right?  
19 The question is can you communicate -- going back to this  
20 slide -- can you have a short-range wireless communication  
21 regarding an updated status of the item if there has been no  
22 updated status of the item? Right?

23 If you think about the baby diaper again, it's very  
24 simple what the logic is. The baby wets the diaper; you  
25 have an updated status. The sensor sends a short-range

1 communication to the computer; you have a short-range  
2 communication. And then in connection with that short-range  
3 communication, right, when the computer receives the signal  
4 from the diaper sensor, it notifies the caregiver.

5 That logic is very clear. It's clear from the language  
6 of the claim. It's inescapable.

7 Now, when we asked Mr. McAlexander about this statement  
8 and I -- I said, right: Wireless hub system is configured  
9 to then communicate, right? The communication has to happen  
10 after the short-range wireless communication.

11 And he said: No. You have inserted the word "then."  
12 That's not in the claim.

13 But then we looked at the sworn declaration that  
14 Mr. McAlexander had submitted just a few months ago, and, in  
15 fact, the language that I read him was directly out of his  
16 sworn declaration explaining how this patent language works  
17 and what it means. So, he fought with me over the word  
18 "then" that I had read directly out of his sworn  
19 declaration.

20 And, finally, he admitted that yes, of course, that is  
21 what he told the Patent Office in the sworn declaration.  
22 He's trying to tell you something different, but that's what  
23 he told the Patent Office.

24 Now, one of the instructions you're going to receive at  
25 the end of this case is that you have to determine the

1 credibility of witnesses, and that includes expert  
2 witnesses.

3 And one of the key things in determining the  
4 credibility of a witness is whether or not he or she has  
5 made statements at other times and places contrary to those  
6 made here on the witness stand.

7 And I would offer you that that requirement takes on  
8 even greater weight when those contrary statements were in a  
9 sworn declaration under penalty of perjury to an office of  
10 this government, of the United States Government.

11 And just to put this timing point in perspective,  
12 right, the claim -- particularly when you get to claim 62  
13 where the -- where it requires to communicate through the  
14 network communication channel information for managing an  
15 item status of an item -- again, that's the user's voice,  
16 "turn on the light." And here the claim could not be  
17 clearer about the timing and causality. It has to be based  
18 on a signal regarding an updated status, right? You cannot  
19 do something based on something else that hasn't happened,  
20 right?

21 And, again, Professor Johnson explained this clearly,  
22 right? What is your understanding of what it means to be  
23 based on this signal regarding an updated status of the  
24 item?

25 And he says: To me, it is even more clear language



1 that, sort of, one is the consequence or result of the  
2 other.

3 Sending the information for managing an item status of  
4 an item is the result of, it's based on, a signal regarding  
5 an updated status of the item.

6 That is common sense. That doesn't take a professor of  
7 computer science, but it's clearly correct.

8 The other thing that Mr. McAlexander has done  
9 throughout this case to try to find a way to accuse these  
10 products is that he has agreed on the one hand that for his  
11 direct infringement claim -- and that's the claim that gets  
12 to a hundred million dollars in the damages expert  
13 calculation -- that these products sitting in the  
14 shrink-wrapped box at Amazon, solely by themselves, have to  
15 include every element of the claims.

16 But then when he goes and tries to explain how the  
17 devices are configured to do all these things they actually  
18 are not configured to do, he draws these diagrams, where he  
19 takes the Amazon diagram and draws these lines that don't  
20 exist anywhere in the diagram. And what he is trying to  
21 imply is that somehow that Echo knows or has a way to  
22 connect to some Philips light bulb in somebody's house.

23 As Mr. Torok explained, that's just not the case.  
24 Right? And it's not only not the case by accident, it's not  
25 the case by design. Right? Because the only purpose of the

1 device is to be the ears, to send what you say to the Alexa  
2 Cloud.

3       If the device actually had to be configured and know  
4 how to communicate with a light bulb or anything else, you  
5 couldn't expand the capability of Alexa. Right? You  
6 couldn't add those hundred thousand separate skills if every  
7 time you added a new one you would have to reconfigure the  
8 device. Right? It would be like having a remote control  
9 with 100,000 different buttons on it. It wouldn't work. It  
10 only works because the device is dumb. It doesn't know  
11 anything about those hundred thousand skills or light bulbs  
12 or Domino's pizzas or anything else. It has one very simple  
13 job that it does very well, which is finding out who is  
14 speaking, record their voice when you say "Alexa", and send  
15 that voice over WiFi to the cloud.

16       And that -- we have to focus on what is done in that  
17 box because that's what Mr. McAlexander says infringes. So,  
18 you can't reach out to the Alexa Cloud. You can't reach out  
19 to Philips or these other companies and say, oh, that's all  
20 done by the device. It's not.

21       So, this is the original document before he drew the  
22 lines on it and it's very clear. If you look at the little  
23 Echo device, the only arrows that come out of it is a short  
24 arrow and it says customer utterance. That's just your  
25 voice being sent over WiFi to the cloud. But what comes

1 back is just Alexa's response to you. There is no arrow in  
2 this diagram that goes from an Echo to a light bulb.

3 Again, when I questioned him, he agreed that he has to  
4 look only at what the device itself does. We can't look at  
5 what the Philips hub does or the Philips Cloud or even the  
6 Alexa Cloud. He acknowledged that. But then when he put up  
7 the diagrams in front of you, he drew lines that did exactly  
8 that. He relied on this configuration, all of which he  
9 acknowledged is controlled and owned by Philips and not  
10 Amazon. Right?

11 The whole point of Mr. Torok's invention is that the  
12 Echo doesn't have to know anything about this. Amazon  
13 doesn't have to know anything about this. This is -- once  
14 you get to a skill, once you've figured out what the intent  
15 is, you hand it off to whoever can do it best. That could  
16 be Philips, could be Uber, it could be Domino's, it could be  
17 Sesame Street. The device doesn't know or care.

18 And, in particular, the device never knows that there  
19 is a short-range wireless signal between a Philips hub and a  
20 Philips bulb. There was no reason for the device to know  
21 that. And if the device did have to know that and had to do  
22 something with that information, the whole system that  
23 Mr. Torok and his colleagues invented would not work. You  
24 cannot burden the Echo with that knowledge because then you  
25 can't expand what Alexa can do. You would have to change

1 the device every time you added something new. And the  
2 whole point of Mr. Torok's patented design is that you do  
3 not do that.

4 So, that brings us to the jury's instructions on direct  
5 infringement. And, again, the requirement, as  
6 Mr. McAlexander acknowledged when I asked him, was that  
7 Amazon has to make, use, and sell a product that meets all  
8 of the requirements of the claim. You have to focus on does  
9 the Echo or the Fire TV and the Fire Tablet, as it sits in  
10 the box, meet all the requirements of the claim. That was  
11 the issue we had yesterday when I was trying to get  
12 Mr. McAlexander to tell me whether or not an Echo would  
13 infringe when there are no Fire -- when there are no smart  
14 home skills available, and we went back and forth. That is  
15 the requirement.

16 Now, the other requirement is that Amazon has to  
17 control the system as a whole and benefit from it. There  
18 has been no evidence that Amazon controls Philips or how it  
19 talks to its bulbs or how it talks to its hubs. In fact,  
20 Mr. McAlexander agreed and testified to the contrary, that  
21 all of those communications, all of that technology is  
22 owned, designed, and controlled by Philips, not Amazon.

23 So, when you get to infringement, the answer is no.  
24 It's no for the reasons I've talked about, but the simplest  
25 one is just the acknowledgment that Mr. McAlexander made,

1 which is that an Echo device, a Fire TV, a Fire Tablet, it  
2 will only send your voice to the cloud when you say "Alexa",  
3 not when you -- when it receives a short-range wireless  
4 communication, which it never actually receives in the first  
5 place.

6 And then we get to the last one. So, even if Anne Wong  
7 had filed these patents in 2006, as she didn't, but even if  
8 she had, she couldn't get these patents because she didn't  
9 do it first. The person who did what she is now claiming  
10 first is Mr. Shriver, and he invented -- as we saw, he  
11 didn't patent it but he had an actual invention. It was in  
12 a box. It was being sold and it was being used, being used  
13 by customers, real people, in their homes to control real  
14 devices.

15 We saw videos of this. We saw pictures of real homes  
16 with lights being turned on and off and TVs being turned on  
17 and off and cameras -- security cameras being shown on the  
18 screen. These are not, you know, figures on a piece of  
19 paper. He built an entire company. He built a real product  
20 and it was being used and it was being used by lots of  
21 people years before these patents.

22 One of the key things, this term "prior art", it sounds  
23 kind of technical and legalistic. What does it mean? It  
24 means you can't take with a patent what people already have  
25 and are using. Right?

1           It's a simple idea. The patent system protects  
2 innovation, new inventions, sure. But it also protects what  
3 is already out there. You can't reach back and take from  
4 Mr. Shriver what he and his customers were already using.  
5 That's the basic point of the patent system, right? It  
6 protects both.

7           And you can't use it to take what Mr. Shriver and his  
8 customers had.

9           Again, the prior art, this thing that was known and  
10 used, doesn't have to be in a patent. It doesn't have to be  
11 in a printed publication. It doesn't have to be all in one  
12 box. Right? It can be any product that was publicly known  
13 or used by others in the United States before the patented  
14 invention was made.

15           Now, Anne Wong didn't make any invention. She gets the  
16 benefit of filing a patent application as if that was making  
17 an invention, so, that is what that refers to.

18           It also -- prior art is also any product that was made  
19 by anyone before the named inventor created the patented  
20 product or the product was not abandoned, suppressed, or  
21 concealed. This applies to Tim Shriver and the HAL system  
22 as well. He invented the product. He didn't suppress it,  
23 abandon it, or conceal it. He sold it. The public used it.  
24 It was presented on TV in 2000 on the Oprah Winfrey Show.  
25 That's kind of the farthest thing from concealment or

1 abandonment.

2 THE COURTROOM DEPUTY: You have 20 minutes.

3 MR. HADDEN: Thank you.

4 Now, the only questions that have been raised by  
5 Mr. McAlexander is that somehow that this HAL system was  
6 some concoction that was made after the fact. The actual  
7 testimony is clear to the contrary.

8 Mr. Shriver was asked: And do you recall what sort of  
9 devices and software you compiled?

10 And this is in response to the subpoena he received in  
11 this case. And he says yeah.

12 That's why I said the computer, monitor, keyboard,  
13 mice, all that pre-2006, along with automation hardware,  
14 like lamp modules, interface modules, even cables, speakers,  
15 and microphones that would be needed to effect home  
16 automation at that time.

17 He had all of what Mr. -- what Professor Johnson tested  
18 already in pre-2006 and it had been used.

19 And, of course, counsel is right. These are not  
20 turnkey systems, right? If you have a smart home system,  
21 it's designed to fit your home. Every customer will do it  
22 differently, but all of the components -- the cameras, the  
23 WiFi router, that standard Dell computer -- those were the  
24 items that the customer used before 2006 to operate the very  
25 same HAL software in their home.

1 Now, Mr. Shriver testified that he knows this not only  
2 because he worked with the developers and manufacturers of  
3 those cameras and other components to make sure that they  
4 would inter-operate with his software, but he -- that he  
5 provided customer technical support. So, he knew what the  
6 customers were using and that it worked with his product.

7 And so he was asked -- and so, one of the examples that  
8 Mr. -- Professor Johnson relied on was that moving his hand  
9 in front of the camera and having it send him a  
10 notification, that motion was detected.

11 And Mr. Shriver is asked at his deposition: Do you  
12 recall when we discussed the rules related to triggering an  
13 e-mail in response to a camera picking up motion? And he  
14 said: Yes.

15 And he was specifically asked: Was that a particular  
16 configuration that you know was used by users of HAL2000  
17 prior to August 10, 2006? And his answer was: Yes.

18 So, the very interaction that Professor Johnson  
19 verified in his testing Mr. Shriver testified was done  
20 before 2006 by customers.

21 So, then we get to what does Mr. McAlexander say. The  
22 first important point is Mr. McAlexander nowhere said that  
23 what Professor Johnson said about what the HAL system did --  
24 nowhere did he say it didn't do that. Nowhere did  
25 Mr. McAlexander identify any claim element that Mr. -- that



1 Professor Johnson had identified was in the HAL system.  
2 Nowhere did Mr. McAlexander say no, that element is not  
3 there.

4 His only complaint was that he claimed that somehow  
5 what Professor Johnson tested was not the same HAL system  
6 and software that existed in 2006.

7 And importantly, again, Mr. McAlexander never even  
8 looked at the HAL system. He didn't come and examine the  
9 system that Professor Johnson tested. He was given that  
10 opportunity. He didn't even run the software ever. So, he  
11 had the opportunity to kick the tires on that HAL system,  
12 and he chose, instead, not to do it.

13 So, there's a lot of, you know, talk that somehow  
14 Professor Johnson did something wrong by testing the system  
15 in 2019. But, right, we're here in 2020. What else could  
16 he have done, right? If he wanted to confirm that the  
17 system in 2006 did what the documentation said it did and  
18 did what Mr. Shriver said it did, the only thing he could  
19 do, as a careful expert, would be to test the system, which  
20 is what he did. He tested it. He videotaped those tests,  
21 and you saw some of them.

22 Mr. McAlexander did nothing. He didn't even look at  
23 the system.

24 So, when we get to invalidity, the HAL system did  
25 everything the claims describe and you should find so.

1 I'm sorry. I'm running out of time, but let me be fast  
2 on one last point.

3 There is a separate issue of eligibility that you heard  
4 right at the end. And the question there is: Is there  
5 anything that was not well-known or unconventional in this  
6 patent claim? Was there any new technology that was  
7 developed?

8 And Mr. -- Professor Johnson went through a long  
9 history of every one of the technologies that is related to  
10 these claims: Video compression, digital television,  
11 wireless networking, and home automation, and he traced the  
12 entire history. And you saw that all of it existed in  
13 one -- well-known forms before these patents.

14 And Ronald Wang, the brother who actually has the  
15 technical degree, confirmed each in his deposition over and  
16 over again. All of these things were known. I didn't  
17 invent any of this. All of it was known. All of it  
18 existed. I did not invent it. I did not invent it. I did  
19 not invent it.

20 Interesting. Where's Ronald Wang, right? He is the  
21 technical brother. He's the one who knows the technology.  
22 He's not here telling you that Amazon's Alexa infringes  
23 these patents. He's nowhere here. He didn't show up. So,  
24 obviously he didn't want to be part of this. He's not  
25 making this claim.

1           So, when you get to the final question regarding patent  
2 eligibility, the answer is there's no new technology here.  
3 Ronald Wang confirmed it. Professor Johnson went through  
4 the history in great detail.

5           All of these things were known. This patent just lists  
6 a laundry list of technologies that were known and that are  
7 now kind of put together in a way that is not new, and it  
8 doesn't deserve a patent.

9           Thank you very much for your time. Let me turn it over  
10 to Mr. Dacus.

11           THE COURT: Thank you.

12           Mr. Dacus, if you want to finish.

13           MR. DACUS: I will, Your Honor. Thank you very much.  
14

15           I want to do just a couple of things in the last few  
16 minutes that we have here to talk with you. I want to touch  
17 very briefly on damages, and then I want to remind you of  
18 why Amazon is actually here.

19           You know that it pains me to even talk about damages,  
20 because these patents are not infringed. They are invalid.  
21 But that's your decision. And, so, to the extent you reach  
22 that damages question, we need to talk about the evidence  
23 that you have in front of you.

24           And to be honest with you, I somewhat like talking  
25 about damages because they really just involve common sense.

1 When you walked through those doors last week -- when you  
2 walked through those doors every day last week and this  
3 week, you brought with you your common sense. And there's a  
4 lot of common sense involved in damages and what you are to  
5 do.

6 The Court is going to give you some instructions and  
7 rules to follow. But when you follow those and apply common  
8 sense, I think the result comes fairly easily.

9 Now, you already know that you're going to be asked  
10 this question about whether or not the damages are lump sum  
11 or a running royalty. The evidence that you have in front  
12 of you comes not from me but directly from Professor Magee.

13 So, when I asked him, is this jury going to be asked  
14 about this question, he said yes.

15 And he acknowledged the only evidence they have in  
16 front of them -- that's the jury -- is all of Amazon's  
17 licenses are lump sum -- all of Innovation Sciences's are  
18 lump sum, and you've seen no evidence that Innovation  
19 Sciences prefers a running royalty. Is that correct? And  
20 he said that's correct.

21 So, I heard Mr. Jackson say a minute ago that you  
22 should listen to their experts. I certainly agree on this  
23 point. All the evidence in front of you, every bit of it,  
24 is that you should check "lump sum" when you answer that on  
25 the verdict form.

1 Now, we've got this issue about whether or not you  
2 should look to these LG and Samsung licenses as indications  
3 of what the values are of these patents. And you remember I  
4 used my shopping for a house analogy with both Dr. Ikizler  
5 and Dr. Magee, and I asked them if they agreed and they said  
6 no. They don't -- they don't like that analogy.

7 But what you see here in front of you -- and I'll tell  
8 you, for those of you who are note takers, the Court is  
9 going to give you written instructions. Look in those  
10 instructions at the heading that says "Damages, Comparable  
11 Agreements", and you'll find that the Court says you should  
12 use these license agreements just as if you were shopping  
13 for a house in a neighborhood. So, the Court agrees with  
14 exactly the procedure and the process that Dr. Ugone  
15 undertook in this case.

16 And I'm not going to belabor this. Dr. Ugone has been  
17 through it in detail. You've seen me put it on the screen.

18 But what LG and Samsung, in sum, got is much more, much  
19 more than what you're here to decide. They got 60-something  
20 patents rather than three. They got worldwide rights. They  
21 got it for a longer term or duration. So, they got  
22 significantly more for 1.8 and \$3.9 million than what's at  
23 issue in this case.

24 And in case there's any confusion, you remember I had  
25 to wrangle a bit with Dr. Wong about whether or not these

1 three licenses are, in fact, included in the LG and Samsung  
2 license. One of you asked her that specific question,  
3 probably because I did not get it clearly out of her. And  
4 she said unequivocally yes, these three patents are included  
5 in those licenses.

6 Now, there is one other issue that I want to touch on  
7 with respect to damages. I told you at the beginning of  
8 this case that -- we didn't talk specifics about damages,  
9 but I told you damages can tell you two things as a juror.

10 One, they can tell you what cases are really about  
11 sometimes. Sometimes what folks say it is about, there is a  
12 little more to it, and damages can give you a clue to that.

13 And the second thing damages can do is they can give  
14 you some insight into this credibility that the Judge keeps  
15 telling you to look for, because you have differing versions  
16 of the story here.

17 And I'm going to submit these facts to you for your  
18 consideration on this credibility issue. Remember that what  
19 the Plaintiff says is, no, the lawsuits against LG and  
20 Samsung did not really include smart home products. Well,  
21 one, that doesn't make sense, because Innovation Sciences  
22 claims their smart home invention goes back to 2006 and  
23 these licenses are in 2016. But there's more to it.

24 You remember that in a sworn declaration -- you saw  
25 this in this case -- Anne Wong said that those lawsuits

1 related to -- look at the very bottom line -- smart phone  
2 and smart home technology. She said that for both the  
3 Samsung and the LG lawsuits.

4 Now, what they said to you was that she withdrew that  
5 declaration. Now, this was a declaration sworn under oath.  
6 She took two days to draft it, by her own admission. It was  
7 drafted by her and this gentleman right here (indicating),  
8 Don Jackson. They took two weeks before she signed it, and  
9 that was in May of 2019.

10 Now, fast-forward. They said we withdrew it. First of  
11 all, if they withdrew it, you would file something formally.  
12 You would draft something formally saying, hey, this wasn't  
13 the truth. They didn't show you any of that. What they  
14 really did -- and if they were being truthful, what they  
15 should have said the facts are, in February of this year  
16 they changed their story. And you ought to ask yourself  
17 why, and I'll give this to you for your consideration.

18 In December of 2019 they got a report from Professor  
19 Magee that said we're going to try to get to Amazon for a  
20 hundred million dollars. And, so, by February what they  
21 realized is how are we going to tell this jury that we  
22 accepted 1.8 million and 3.9 million from LG and Samsung for  
23 these very same patents plus a whole bunch more, but we want  
24 a hundred million from Amazon?

25 And, so, what they did is they changed their story.

1 Those are the facts. You can judge whether or not how that  
2 affects the credibility of what they told you. That's your  
3 decision. But those are the facts for you to consider.

4 Now, in the end those licenses provide you -- if you  
5 get to damages, those licenses, as Dr. Ugone said, provide  
6 you guideposts that you should use, and as the Court has  
7 told you in your instructions, you should use, just as if  
8 you were shopping for a house, the same way, same common  
9 sense.

10 Now, let's contrast the value in those licenses with  
11 the calculation that Dr. Ikizler and Dr. Magee have done.  
12 And I'm not going to spend a lot of time on this because a  
13 lot of this testimony you've heard very recently and I'm  
14 confident that you remember it. But the facts are that that  
15 calculation is really inflated sort of at every step.

16 And keep in mind what we're trying to do here and keep  
17 in mind what Dr. Ikizler did. He took an alleged  
18 apportionment percentage and he multiplied it by an alleged  
19 profit percentage, both of which I believe the evidence  
20 shows are highly inflated. And you've heard all the  
21 evidence as to why, but there's a piece of evidence that I  
22 would ask you to consider that I think is perhaps most  
23 important, and it's this.

24 The first time Dr. Ikizler testified and again this  
25 morning, as he must, he admits that his calculation that's



1 based on these terms that Dr. -- I mean that Mr. McAlexander  
2 chose --

3 THE COURTROOM DEPUTY: You have five minutes.

4 MR. DACUS: Thank you.

5 -- must be tied to the patented feature, not to the  
6 Echo. We know the Echo is successful. You have to tie  
7 these damages to the patented feature. And he got these  
8 terms from Mr. McAlexander.

9 So, what did Mr. McAlexander say that he gave to  
10 Dr. Ikizler? "Was your intent in giving him these terms to  
11 capture things that were invented by Anne Wong?" He said  
12 unequivocally, "no."

13 That's exactly the opposite of what Dr. Ikizler is  
14 supposed to be doing. He's supposed to be valuing the  
15 patented invention. He got the terms from Mr. McAlexander.  
16 By Mr. McAlexander's own admission, he's giving him terms  
17 that have nothing to do with these patents.

18 In the end, as Dr. Ugone told you, if you find damages  
19 here, the damages should be somewhere between 1.8 and 2.2  
20 million. Obviously, I think they should be zero.

21 Now, let me finish up here. I told you at the  
22 beginning of this case that this was an important case for  
23 Amazon. I'm sure when you came to court last week, you did  
24 not think you were going to be deciding a case that truly  
25 impacted our United States patent system and how it

1 functions. But that's why you're here and that's truly  
2 where you find yourself, is with that kind of case to be  
3 decided.

4 And in the end, the reason Amazon is here is because  
5 this needs to stop. It needs to stop. The attempt by folks  
6 like Innovation Sciences to take and claim technology from  
7 companies that have applied thousands of engineers,  
8 thousands of scientists, technology from some of the best  
9 and brightest US engineers, needs to stop.

10 There is one piece of evidence in this case that I  
11 think best exemplifies what this case is about. This is an  
12 exhibit that the Plaintiff has showed you, 878. They've  
13 showed it to you five or six times. It's this e-mail from  
14 Daniel Rausch at Amazon. Daniel Rausch is writing to his  
15 employees. He's a manager. And what the Plaintiff has  
16 shown you every time is how successful these Echo products  
17 have been. This is Daniel Rausch writing, saying hey, we've  
18 crossed some milestones in how many Echos we're selling, how  
19 much money we're making. That's the point that they have  
20 used.

21 But what they have failed to show you is the entire  
22 e-mail.

23 THE COURTROOM DEPUTY: Two minutes.

24 MR. DACUS: Thank you.

25 And what I want to show you is the very last sentence

1 in this e-mail, because I think it exemplifies exactly why  
2 we are here. What Daniel Rausch wrote -- and remember, he  
3 wrote this e-mail at a time he had no idea this e-mail would  
4 ever see the light of day. Under this Court's rules, you  
5 have to produce all of your e-mails related to issues.  
6 Mr. Rausch had no idea this would ever see the light of day.  
7 And what he told his Amazon employees is: All of this  
8 success comes directly from your passion for customers and  
9 developers, and your very, very hard work, and thanks for  
10 all you do.

11 That's what this case is about. These folks want to  
12 claim our success, and they want to conceal from you, as  
13 they have done in this e-mail, the reason for that success.  
14 And it needs to stop.

15 I appreciate very much your time and attention. I know  
16 it's been a long eight days, but there is no way that I, on  
17 behalf of Amazon, can fully express how important this case  
18 is and how much we appreciate you being here.

19 I'm going to sit down. Some lawyer -- I don't know  
20 which lawyer, but a lawyer from this table is going to stand  
21 up and talk. I don't get to say anymore. I need to trust  
22 you that whatever they say next, you will think in your  
23 mind, well, is that really true? What does the evidence  
24 show? What would the Amazon lawyer say in response? And  
25 we'll trust you to do that.

1 And I appreciate it, and we look forward to receiving  
2 your verdict.

3 Thank you.

4 THE COURT: Thank you, Mr. Dacus.

5 If Plaintiff wants to conclude the argument and,  
6 Mr. Jackson, are you doing that?

7 MR. JACKSON: Yes, Your Honor. How much time do I  
8 have?

9 THE COURT: Thirteen minutes.

10 MR. JACKSON: Thirteen.

11 Thank you, Your Honor.

12 Unfortunately, sometimes on days like today I'm  
13 reminded about why people think so little about lawyers.  
14 Frankly, I thought things wouldn't work out this way. But  
15 some of the things that you heard from Amazon's counsel are  
16 not based on the evidence at all. And I'm being polite.

17 The personal comment about me writing some declaration,  
18 untrue. I didn't write that declaration. Somebody else on  
19 our team did, but Amazon's counsel was trying to make a  
20 point about me personally. It's not true.

21 Amazon's counsel, early in the presentation, talked  
22 about how Mr. Torok's applications -- the Patent Office when  
23 it was considering that application was aware of Dr. Anne  
24 Wong's patents somehow. That's not true. There's no  
25 evidence of that. Nobody -- nobody got up on the stand and

1 confirmed that. It's simply not true. There were several  
2 examples like that.

3 Amazon's counsel told you that Dr. Wong didn't tell the  
4 Patent Office about their earlier filings back in 2006 and  
5 2007.

6 Paul, can you pull up Plaintiff's Exhibit 1, please?

7 That's simply not true. Right in the list of  
8 applications that they're claiming the benefit of that came  
9 earlier are 2007 and 2006 applications.

10 If we can pull that up, I'll show you.

11 First page, please.

12 And this -- this starts here (indicating) where it says  
13 related -- related U.S. application data. This is where the  
14 inventors -- if they want to claim the benefit of  
15 applications they've previously filed, it gets listed here.

16 Paul, try the second page. I think this is continued  
17 on the second page. So, if you go to the second page --  
18 I've got to clear the screen. If you can zoom -- no, second  
19 page. Zoom in on this paragraph in the upper left-hand  
20 column there.

21 This lists all of the applications that the inventors  
22 claimed the benefit of. And you'll see -- just starting  
23 here at the top there's a 16 application, 2013, 2012, 2010,  
24 '10, 2006, 2012, 2012, 2011, '11, 2005, 2012, 2011. There's  
25 your May 22, 2007, and there's your August 10, 2006.

1           They disclosed all of those prior applications to the  
2 Patent Office as part of the process of getting that patent.  
3 The suggestion that somehow they didn't tell the Patent  
4 Office about those earlier applications, I don't know where  
5 that comes from.

6           This is important because this relates to another point  
7 that Amazon's counsel made, which is also incorrect, and  
8 that is whether an inventor in this situation that you just  
9 saw where this -- there's this long chain of applications  
10 that go back in time to 2006 and 2007 -- whether in that  
11 situation somebody like the Innovation inventors can claim a  
12 product that came out during that sequence of applications.

13           They can. Let me show you a page from the jury  
14 instructions you're going to be asked to receive. Make a  
15 note for yourself. Read it for yourself. It's on page 24  
16 of the version that I have at the bottom, and I'm going to  
17 put it on the screen.

18           This is Judge Mazzant's instructions to you as part of  
19 your deliberations. It says: It is not improper for a  
20 patent owner to amend or insert claims in a patent  
21 application for the purpose of obtaining a right to exclude  
22 a known commercial product from the market.

23           When can you do that? You can do that when your  
24 applications go back prior to that product. Why? Because  
25 if you disclose your invention first, then the later product

1 isn't prior art to your inventions. Your inventions came  
2 first.

3       You remember last Friday, I hope, when -- I think it  
4 was at the end of the day. Mr. Torok was on the stand, and  
5 I went through all of his applications one by one, and he  
6 admitted that the Innovation inventors came up with the  
7 invention that was disclosed in Figure 16 years, years  
8 before every single one of his applications, one of which  
9 was the one that Amazon's counsel put on the screen as an  
10 example. That one was filed in 2015. Dr. Wong and her  
11 co-inventors filed the invention described in Figure 16.  
12 And the figures, frankly, come before that no later than  
13 May of 2007.

14       So, these things are just not right. You were told  
15 things that are just not right. I mean, contradicted -- I'm  
16 shocked, frankly. You were going to be told something  
17 directly opposite of what Amazon's counsel just represented  
18 to you. And I agree with them. That kind of thing goes  
19 directly to the merits of the case. Why would they make  
20 those kind of representations that are not supported by the  
21 record?

22       I can't -- I couldn't catalog everything, but Amazon's  
23 counsel also made a lot of representations about why they --  
24 Amazon's products didn't infringe and so forth.

25       And you have to base your decisions based on the

1 evidence that you've seen, your memory about the witnesses'  
2 testimony. You can't rely on my statements to you, and you  
3 can't rely on Amazon's statements to you, either. That's  
4 not evidence.

5 Your memory and the evidence, the documents and so  
6 forth that you're going to be given, that's what you have to  
7 base your decision on. A lot of what was said, there was no  
8 support in the record for that. And you -- I'm going to ask  
9 you to carefully look at that evidence. I can't catalog  
10 every single instance.

11 You were also -- Amazon's counsel also talked to you  
12 about the HAL system, and -- and the -- the statement,  
13 again, is -- was careful. The statements that were made to  
14 you were careful about that HAL system. The statement was  
15 Mr. Shriver testified that all the pieces that he used in  
16 his system were in existence before 2006.

17 That's not the test. That's not the test. Even if  
18 true -- and I don't have -- I'm not here to contest that.  
19 But even if every single one of those pieces is true, that  
20 it was in existence before 2006, remember the question is  
21 whether the system, as constructed by Mr. Shriver or as  
22 constructed by Dr. Johnson and tested by Dr. Johnson, was  
23 that system, did that exist.

24 And that's the question they can't answer, haven't  
25 answered. They'd like to tell you it did, but there's no



1 evidence that it did. In fact, Mr. Shriver's testimony says  
2 it didn't.

3 The question -- the rhetorical question you were asked  
4 was, what could Dr. Johnson have done differently? Well,  
5 what he could have done is found an actual system that  
6 actually existed that was actually being used in somebody's  
7 home and use that as the basis of his testimony.

8 THE COURTROOM DEPUTY: You have five minutes.

9 MR. JACKSON: Thank you.

10 That didn't happen, either. Why? They couldn't find  
11 one because it probably didn't exist. These things are as  
12 different as snowflakes. The thing you saw in his -- in his  
13 report and his testimony was like a snowflake; that is, a  
14 one of a kind. It didn't exist before that. That's  
15 Mr. Shriver's -- based on Mr. Shriver's words, not mine.

16 I'm going to change gears a little bit and talk a  
17 little bit about damages. I don't have a lot to say about  
18 that, but I do -- I do want to pick up on a point that  
19 Amazon's counsel made about the damages. And in particular,  
20 he was asking you to award what he called a lump sum versus  
21 a reasonable royalty. And I just wanted to tell you a  
22 little bit about that, a little bit more. I didn't get the  
23 chance before.

24 If you decide -- well, a reasonable royalty -- let me  
25 just basically tell you what that means in terms of my

1 understanding, and I think it's going to be in the  
2 instructions. That's where you're deciding that the accused  
3 infringer, if you believe they infringe and if you believe  
4 the patents are not invalid, they should pay on a per-unit  
5 basis. That seems fair, right? If they sell a lot of  
6 products, they'll pay per unit for each product they sell.  
7 But if they don't sell a lot of products, they pay less.  
8 Let the market decide how much is paid.

9 What Amazon would like you to decide is that there  
10 would be this one-time payment that would forever cover all  
11 sales, regardless of how successful they have been in  
12 selling products.

13 And in this situation if -- if -- if the parties were  
14 in the situation of somebody like a Samsung or an LG, where  
15 they didn't require that we bring a jury in and decide the  
16 dispute and go through that effort, maybe that would be  
17 appropriate.

18 But here this is a different situation. You've got to  
19 assume the hypothetical negotiation situation where Amazon  
20 would sit down and say, yep, we assume the patents are  
21 valid. We assume the patents are infringed. Okay? Which  
22 means they have to take a license. How much would they  
23 agree to pay and how much would Innovation agree to accept  
24 in that situation?

25 So, this is a different circumstance than LG and

1 Samsung. Reasonable royalty is the appropriate measure;  
2 lump sum is not.

3 Amazon's counsel also said -- let me have -- thanks --  
4 that this case was important to Amazon. And I asked  
5 Mr. Torok earlier, if that's true, with all due respect to  
6 Mr. Torok -- he's an engineer -- where was somebody from  
7 Amazon to come here and tell you about the business  
8 decisions they made, what was important to Amazon, what they  
9 expected to make from these products, what was the strategy.  
10 Nobody showed up to talk about that.

11 Mr. Bezos' name is on those BRD documents. Those are  
12 the -- where he signs off on approving the further  
13 development, manufacture, and sale of the products.

14 THE COURTROOM DEPUTY: You have two minutes.

15 MR. JACKSON: Not that I -- thank you.

16 Not that I would expect Mr. Bezos to show up, although  
17 it's possible, I suppose. But where was anybody to talk  
18 about a decision that he made or his senior executives?  
19 Nobody. I -- honestly, it's not that important a case to  
20 them. I think it should be, but it -- there's no indication  
21 that it is.

22 I would ask you when you go back to the jury room to  
23 deliberate, there's this one phrase that -- that Amazon's  
24 counsel keeps bringing up as a basis for non-infringement,  
25 and it has to do with the short-range wireless communication

1 paragraph. Shows up in a lot of different claims.

2 I want you to look at that paragraph carefully. I want  
3 you to look at the Judge's claim construction about the term  
4 in that claim. The phrase reads "updated status of the  
5 item." And Judge Mazzant construed that to -- to mean a  
6 change in item status.

7 There is nothing about -- and you have to apply Judge  
8 Mazzant's constructions, just like the parties do. That --  
9 he's telling us what that claim term means. And there's  
10 nothing about that claim term or his construction that  
11 requires that it be based on -- that that signal that's  
12 referred to in the claim be something that is based on a  
13 past event. It can include situations where you want to  
14 change the status of a lock, for example. Doesn't have to  
15 be the detection of a past event.

16 And I have run out of time. And, again, thank you very  
17 much for your service on this jury. We do really appreciate  
18 it, and we entrust this case to you.

19 Thank you.

20 THE COURT: Thank you, Mr. Jackson.

21 Ladies and gentlemen, let me just ask you, do you need  
22 a break before I give you my final instructions? We've  
23 delayed lunch, so lunch won't be coming until closer  
24 between -- you know, I'll be done with my instructions and  
25 lunch will be upstairs hopefully by then.

1 Does anybody need a break or are you okay continuing?

2 Anybody? Okay.

3 JUROR: I could use a quick break.

4 THE COURT: I'm sorry?

5 JUROR: I could use a quick break.

6 THE COURT: Okay. That's fine. We'll just take a  
7 short break. And, again, please -- you've heard the closing  
8 arguments. You have not heard my final instruction so you  
9 still can't discuss the case. Just go up and, I guess, take a  
10 short break and we'll come right back. Thank you.

11 (Jury exits the courtroom, 12:25 p.m.)

12 THE COURT: I'm going to go ahead and put a copy of  
13 the charge in each of their seats.

14 Anything further from Plaintiff right now?

15 MR. JACKSON: No, Your Honor.

16 THE COURT: Defense?

17 MR. HADDEN: No, Your Honor.

18 THE COURT: Okay. Does anybody need to use the  
19 facilities? I was going to wait here and have them turn around  
20 and come back, so...

21 (Recess, 12:26 p.m.)

22 (Open court. All parties present.)

23 (Jury present, 12:34 p.m.)

24 THE COURT: Please be seated.

25 In your chair is a copy of the charge that I'm about to

1 read to you. The law requires that I read it, so you can  
2 follow along. You have to listen, but you can follow along  
3 as well, and you'll be able to take that back with you to  
4 the jury room, so...

5 Members of the jury, it is my duty and responsibility  
6 to instruct you on the law that you are to apply in this  
7 case. The law contained in these instructions is the only  
8 law you may follow. It is your duty to follow what I  
9 instruct you the law is, regardless of any opinion that you  
10 might have as to what the law ought to be.

11 If I have given you the impression during the trial  
12 that I favor either party, you must disregard that  
13 impression. If I have given you the impression during the  
14 trial that I have an opinion about the facts of the case,  
15 you must disregard that impression. You are the sole judges  
16 of the facts of this case. Other than my instructions to  
17 you on the law, you should disregard anything that I have  
18 said or done during the trial in arriving at your verdict.

19 You should consider all of the instructions about the  
20 law as a whole and regard each instruction in light of the  
21 others, without isolating a particular statement or  
22 paragraph.

23 The testimony of the witnesses and other exhibits  
24 introduced by the parties constitutes the evidence. The  
25 statements of counsel are not evidence. They are only

1 arguments. It is important for you to distinguish between  
2 the arguments of counsel and the evidence on which those  
3 arguments rest. What the lawyers say or do is not evidence.  
4 You may, however, consider their arguments in light of the  
5 evidence that has been admitted and determine whether the  
6 evidence admitted in the trial supports the arguments. You  
7 must determine the facts from all the testimony that you  
8 have heard and the other evidence submitted. You are the  
9 judges of the facts, but in finding those facts, you must  
10 apply the law as I instruct you.

11 You are required by the law to decide this case in a  
12 fair, impartial, and unbiased manner, based entirely on the  
13 law and on the evidence presented to you here in the  
14 courtroom. You may not be influenced by passion, prejudice,  
15 or sympathy you might have for the Plaintiff or the  
16 Defendant in arriving at your verdict.

17 Now, Plaintiff Innovation Sciences, LLC, referred to as  
18 Innovation Sciences, has the burden of proving its case by a  
19 preponderance of the evidence. To establish by a  
20 preponderance of the evidence means to prove something is  
21 more likely so than not so. If you find that Innovation  
22 Sciences has failed to prove any element of its claim by a  
23 preponderance of the evidence, then it may not recover on  
24 that claim.

25 To prove invalidity of any claim, Defendants

1 Amazon.com, Inc. and Amazon Web Services, Inc., also  
2 referred to as just Amazon, must persuade you by clear and  
3 convincing evidence that the claim is invalid. Proving a  
4 claim or defense by clear and convincing evidence means that  
5 it is highly probable that the facts are as the party  
6 contends.

7       These standards are different from what you have heard  
8 about in criminal proceedings where a fact must be proved  
9 beyond a reasonable doubt. On a scale of these various  
10 standards of proof, as you move from the preponderance of  
11 the evidence, where proof need only be sufficient to tip the  
12 scale in favor of the party proving the fact, to beyond a  
13 reasonable doubt, where the fact must be proven to a very  
14 high degree of certainty, you may think of clear and  
15 convincing evidence as being between these two standards.

16       Now, the evidence you are to consider consists of the  
17 testimony of the witnesses, including witnesses whose  
18 testimony was provided by prior deposition, the documents  
19 and other exhibits admitted into evidence, and any fair --  
20 fair inferences and reasonable conclusions you can draw from  
21 the facts and circumstances that have been proven.

22       Now, generally speaking, there are two types of  
23 evidence. One is direct evidence, such as the testimony of  
24 an eyewitness. The other is indirect or circumstantial  
25 evidence. Circumstantial evidence is evidence that proves a



1 fact from which you may logically conclude other facts  
2 exist. As a general rule, the law makes no distinction  
3 between direct and -- direct and circumstantial evidence,  
4 but simply requires that you find the facts from a  
5 preponderance of all the evidence or by clear and convincing  
6 evidence, both direct and circumstantial.

7 Now, certain charts and summaries have been shown to  
8 you solely to help explain or summarize the facts disclosed  
9 by the books, records, and other documents that are in  
10 evidence. These charts and summaries are not evidence or  
11 proof of any facts. You should determine the facts from the  
12 evidence.

13 Some exhibits have been presented to you as  
14 illustrations. Demonstrative evidence can be used to  
15 describe something involved in this trial, but it is not  
16 itself evidence. If your recollection of the evidence  
17 differs from the exhibit, rely on your recollection.

18 Now, you alone are to determine the questions of  
19 credibility or truthfulness of the witnesses that have  
20 testified. In weighing the testimony of the witnesses, you  
21 may consider the witness's manner and demeanor on the  
22 witness stand, any feelings or interest in the case, or any  
23 prejudice or bias about the case that he or she may have,  
24 and the consistency or inconsistency of his or her testimony  
25 considered in light of the circumstances.

1 Has the witness been contradicted by other credible  
2 evidence? Has he or she made statements at other times and  
3 places contrary to those made on the witness stand? You  
4 must give the testimony of each witness the credibility you  
5 think it deserves.

6 Even though a witness may be a party to an action and,  
7 therefore, interested in its outcome, the testimony may be  
8 accepted if it is not contradicted by direct evidence or by  
9 any inference that may be drawn from the evidence if you  
10 believe the testimony.

11 You are not to decide this case by counting the number  
12 of witnesses who have testified on the opposing sides.  
13 Witness testimony is weighed; witnesses are not counted.  
14 The test is not the relative number of witnesses, but the  
15 relative convincing force of the evidence. The testimony of  
16 a single witness is sufficient to prove any fact, even if a  
17 greater number of witnesses testified to the contrary, if,  
18 after considering all of the other evidence, you believe  
19 that witness.

20 Now, when knowledge of a technical subject matter may  
21 be helpful to the jury, a person who has special training or  
22 experience in that technical field is permitted to state his  
23 or her opinion on those technical matters. During the  
24 trial, you've heard testimony from the following individuals  
25 who expressed expert opinions: Joseph McAlexander,

1 Innovation Sciences' technical expert; Devrim -- and I'm  
2 pronouncing -- Ikizler. I -- I apologize for the  
3 pronunciation. And Stephen Magee, Innovation Sciences'  
4 damages experts; David Johnson, Amazon's technical expert;  
5 and Keith Ugone, Amazon's damages expert.

6 You are not required to accept these opinions. As with  
7 any other witness, it is up to you to decide whether to rely  
8 on their opinions.

9 As I told you in my preliminary instructions, I have  
10 given you the opportunity to give me written questions  
11 anonymously after a witness testified when you had an  
12 important question of the witness that was strictly limited  
13 to the substance of the witness's testimony.

14 Remember that I asked you not to be offended if I did  
15 not present your question to be answered by the witness.  
16 You should not speculate on an answer to any unasked  
17 question, and you should not speculate on or consider any  
18 facts or events outside the testimony and exhibits that you  
19 have heard and seen here in the courtroom.

20 When testimony or an exhibit is admitted for a limited  
21 purpose, you may consider that testimony or exhibit only for  
22 the specific limited purpose for which it was admitted.

23 A stipulation is an agreement. When there is no  
24 dispute about certain facts, the attorneys may agree or  
25 stipulate to those facts. You must accept a stipulated fact

1 as evidence and treat that fact as having been proven here  
2 in court. Here the parties have stipulated to the  
3 following:

4 One, Innovation Sciences is a Texas limited liability  
5 company having its principal place of business in Plano,  
6 Texas.

7 Two, Virginia Innovation Sciences, Inc. was a  
8 corporation organized under the laws of the State of  
9 Virginia with a place of business at 6301 Edsall Road,  
10 Number 517, Alexandria, Virginia, zip code 22312.

11 Three, effective November 9, 2018, Virginia -- Virginia  
12 Innovation Sciences merged into Innovation Sciences.

13 Four, the Court substituted Innovation Sciences for  
14 Virginia Innovation Sciences in this case.

15 Five, the current Plaintiff, Innovation Sciences, is a  
16 Texas company with an office at 5800 Legacy Circle,  
17 Suite 311, in Plano, Texas, zip code 75024.

18 Six, Anne Wong is the CEO and sole owner of Innovation  
19 Sciences.

20 Seven, Virginia Innovation Sciences filed a complaint  
21 in this case, Civil Action No. 14:18-cv-474 -- and that's  
22 just my initials, it was assigned to me -- against  
23 Amazon.com, Inc. on July 5, 2018.

24 Eight, Innovation Sciences filed an amended complaint  
25 on March 22nd, 2019, adding new defendants.

1 Nine, Defendant Amazon.com, Inc. And Amazon Web  
2 Services, Inc. are each Delaware corporations having their  
3 principal place of business in Seattle, Washington.

4 Ten, the patents-in-suit are U.S. Patent No. 9,912,983,  
5 the '983 patent; 9,729,918, the '918 patent; and 9,942,798,  
6 the '798 patent.

7 U.S. Patent No. 9,912,983 was filed on June 19, 2017  
8 and was issued on March 6th, 2018. It names Ronald Wang and  
9 Anne Wong as co-inventors.

10 12, U.S. Patent No. 9,729,918 was filed on January 26,  
11 2017 and issued on August 8, 2017. It names Ronald Wang and  
12 Anne Wong as co-inventors.

13 13, U.S. Patent No. 9,942,979 -- '798 was filed on  
14 March 15th, 2016 and issued on April 10th, 2018. It names  
15 Ronald Wang and Anne Wong as co-inventors.

16 14, Ronald Wang is the brother of Anne Wong.

17 15, the '983 patent, '798 patent, and the '918 patent  
18 are related and share the same specification.

19 16, the '983 patent is a continuation of the  
20 '918 patent that is a continuation of the '798 patent.

21 17, the '983 patent, '798 patent, and the '918 patents  
22 are -- are identically titled "Method and System for  
23 Efficient Communication."

24 18, the priority date of the '983 patent, '798 patent,  
25 and the '918 patent is August 10th, 2006.

1           19, the accused Amazon Echo products in this case are  
2 the Echo Gen 1, Echo Gen 2, Echo Dot Gen 1, Echo Dot Gen 2,  
3 Echo Dot Gen 3, Echo Dot Kids, Echo Plus Gen 1, Echo Plus  
4 Gen 2, Echo Spot, Echo Show -- Echo Show Gen 1, Echo Show  
5 Gen 2, and Echo Tap.

6           20, the accused Amazon Fire TV products in this case  
7 are the Fire TV Gen 3, Fire TV Stick Gen 2, Fire TV Stick  
8 4K, and Fire TV Cube.

9           21, the accused Amazon Fire Tablet products in this  
10 case are the Fire HD 6, Fire HD 7, Fire HD 8.9, and Fire HD  
11 8, and Fire HD 10.

12           22, Innovation Sciences also accuses the Alexa Voice  
13 Service/Amazon Cloud in this case.

14           Now, as I told you at the start of this case, I will  
15 give you a summary of each side's contentions in this case.  
16 I will then provide you with detailed instructions on  
17 each -- on what each side must prove to win on its side of  
18 its contentions.

19           The Plaintiff in this case, again, is Innovation  
20 Sciences, LLC, which will be referred to simply as Plaintiff  
21 or Innovation Sciences. The Defendants in this case are  
22 Amazon.com, Inc. and Amazon Web Services, Inc., also just  
23 simply referred to as the Defendant or as Amazon.

24           The patents involved in this case are, we've already  
25 mentioned, the '983 patent, the '918 patent, and the

1 '798 patent.

2 Innovation Sciences asserts that Amazon infringes  
3 claims 22, 24, 39, 62, 64, 67, 80, 105, and 108 of the  
4 '983 patent; claim 28 of the '918 patent; and claims 5, 6,  
5 and 52 of the '798 patent. Innovation Sciences seeks  
6 damages from Amazon for allegedly infringing these claims.

7 The products that are involved to infringe are the  
8 Amazon Fire TV, Fire Tablet, and Echo products, and the  
9 Alexa Voice Service and Amazon Cloud, collectively referred  
10 to as the Alexa Voice Service. These may be referred to  
11 simply as the "accused products" or the "accused  
12 instrumentalities."

13 Amazon denies that it has infringed, or infringes, the  
14 asserted claims of the patents-in-suit. Amazon also asserts  
15 that -- asserts that the asserted patents are invalid.

16 Those are the positions of the parties that are here  
17 before you today. Your job will be to decide whether or not  
18 the asserted claims have been infringed and whether or not  
19 those claims are invalid.

20 If you decide that any of the -- of the asserted claims  
21 (sic) have been infringed and is not invalid, you will then  
22 need to decide any monetary damages to be awarded to  
23 Innovation Sciences to compensate for the infringement.

24 If you decide that Amazon does not infringe or that the  
25 asserted patents are invalid, you will not need to decide

1 any monetary damages.

2 Claims of the patent.

3 Before you can decide many of the issues in this case,  
4 you will need to understand the role of the patent claims.  
5 The patent claims are the numbered sentences at the end of  
6 each patent. The claims are important because it is the  
7 words of the claim that define what the patent covers. The  
8 figures and text in the rest of the patent provides a  
9 description and/or examples of the invention and provide  
10 a -- a context for the claims, but it is the claims that  
11 define the breadth of the patent's coverage. Therefore,  
12 what a patent covers depends in turn on what each claims  
13 cover.

14 The patent at issue -- the patents at issue in this  
15 case have been provided to you in your jury notebooks.  
16 Remember, only certain claims of the three patents are at  
17 issue in this case. Do not attempt to determine  
18 infringement or invalidity with respect to any other claim  
19 included in the patents-in-suit.

20 Now, claims are usually divided into parts called  
21 limitations or elements. When a thing such as the accused  
22 product or accused instrumentality meets all the  
23 requirements of a claim, the claim is said to cover that  
24 thing, and that thing is said to fall within the scope of  
25 that claim. In other words, a claim covers a product or



1 process where each of the claim elements or limitations is  
2 present in that product or process.

3 For example, a claim that covers the invention of a  
4 table may recite a tabletop, four legs, and the glue that  
5 secures the legs to the tabletop. In this example, the  
6 tabletop, the legs, and the glue are each separate  
7 limitations or elements of the claim.

8 Now, this case involves two types of patent claims,  
9 independent claims and dependent claims. An independent  
10 claim sets forth all of the requirements that must be met in  
11 order to be covered by that claim. Thus, it is not  
12 necessary to look to any other claim to determine what an  
13 independent claim covers. In this case claims 22 and 62 of  
14 the '983 patent are each independent claims, and the  
15 remaining claims are dependent claims.

16 A dependent claim does not itself recite all of the  
17 requirements of the claim but refers to another claim for  
18 some of its requirements. In this way the claim depends on  
19 another claim. A dependent claim incorporates all of the  
20 requirements of the claim to which it refers. The dependent  
21 claim adds its own additional requirements.

22 To determine what a dependent claim covers, it is  
23 necessary to look at both the dependent claim and the  
24 independent claim to which it refers. For example,  
25 claims 67 and 80 of the '983 patent are dependent claims

1 that depend on independent claim 62 of the '983 patent. The  
2 dependent claims asserted in this case are claims 24, 39,  
3 64, 67, 80, 105, and 108 of the '983 patent and claim 28 of  
4 the '918 patent and claims 5, 6, and 52 of the '798 patent.

5 A product that meets all of the requirements of both  
6 the dependent claim and the claims to which it refers is  
7 covered by that dependent claim.

8 If you find that an independent claim is not infringed,  
9 then you must also find that its dependent claims are not  
10 infringed. If you find that an independent claim is  
11 infringed, you must further decide whether its dependent  
12 claims that are asserted in this case are also infringed.

13 Now, it is my job as the judge to determine the meaning  
14 of any claim language from which these patents -- from these  
15 patents that need interpretation. You must accept the  
16 meanings that I give you and use them when you decide  
17 whether any claim is infringed. In your notebook, you have  
18 been provided with a copy of the meanings that I have  
19 adopted for certain claim terms.

20 You will first need to understand what each claim  
21 covers in order to decide whether or not there is  
22 infringement of the claim and to decide whether or not the  
23 claim is invalid. Sometimes the words in a patent claim are  
24 difficult to understand, and therefore, it's difficult to  
25 understand what requirements these words impose.

1           The law says it is my role to define the terms of the  
2       claims, and it is your role to apply my definitions to the  
3       issues that are -- you are asked to decide in the case.  
4       Therefore, as I explained to you at the start of the case, I  
5       have determined the meaning of the claims, and I will  
6       provide you with my definitions of certain claim terms. You  
7       must accept my definitions of these words in the claims as  
8       being correct.

9           By understanding the meaning of the words in the claim  
10      and by understanding that the words in the claim set forth  
11      the requirements that a product or process must meet in  
12      order to be covered by that claim, you will be able to  
13      understand the scope of the coverage for each claim. Once  
14      you understand what each claim covers, then you are prepared  
15      to decide the issues that you will be asked to decide, such  
16      as infringement and invalidity.

17          For any words in the claim for which I have not  
18      provided you with a definition, you should apply its  
19      ordinary and accustomed meaning as understood by one  
20      skill -- one of ordinary skill in the art. You should not  
21      take my definition of the language of the claim as an  
22      indication that I have a view regarding how you should  
23      decide the issues that you are being asked to decide, such  
24      as infringement and invalidity. These issues -- these  
25      issues are for you to decide.

1 My interpretation of the various claim terms and  
2 phrases appears in your juror notebook, but I will read them  
3 to you now.

4 In the '983 patent, "updated status of an item" means a  
5 change in item status.

6 "Updated item status" means a change in item status.

7 "Short-range wireless communication" means a  
8 communication using ZigBee, Bluetooth, UWB, or other  
9 similarly ranged communication protocols.

10 In the '918 patent claim terms, "updated status of the  
11 item" means a change in item status.

12 "Updated item status" means a change in item status.

13 And "short-range wireless communication," again, means  
14 a communication using ZigBee, Bluetooth, UWB, or other  
15 similarly-ranged communication protocols.

16 In the '798 patent claim terms -- and they're the same  
17 here again, but let me read them. "Updated status of the  
18 item" means a change in item status.

19 "Updated item status" means a change in item status.

20 And "short-range wireless communication" means  
21 communication using ZigBee, Bluetooth, UWB, or other  
22 similarly-ranged communication protocols.

23 I will now instruct you on how to decide whether or not  
24 Amazon has infringed the asserted patents. Infringement is  
25 assessed by a claim-by-claim basis. Therefore, there may be

1 infringement on a particular patent as to one claim but no  
2 infringement as to other claims in that patent.

3       There are three possible ways a claim may be infringed.  
4 The three types of infringement are called: One, direct  
5 infringement; two, active inducement; and, three,  
6 contributory infringement. Active inducement and  
7 contributory infringement are referred to as indirect  
8 infringement. There cannot be indirect infringement without  
9 someone else engaging in direct infringement.

10       In this case, Innovation Sciences has alleged that  
11 Amazon directly infringes the asserted patents and is liable  
12 for -- and is also liable for indirect infringement.

13       In order to prove infringement, Innovation Sciences  
14 must prove that the requirements for one or more of these  
15 types of infringement are met by a preponderance of the  
16 evidence.

17       I will now explain each of these types of infringement  
18 in more detail.

19       Direct infringement by literal infringement.

20       In order to prove direct infringement by literal  
21 infringement, Innovation Sciences must prove by a  
22 preponderance of the evidence that Amazon made, used, sold,  
23 offered for sale within or imported into the United States  
24 an accused product that meets all of the requirements of a  
25 claim and did so without the permission of Innovation

1 Sciences during the time the asserted patents were in force.

2 You must compare each accused Amazon product for each  
3 and every one of the requirements of each asserted claim to  
4 determine whether all the requirements of that claim are  
5 met.

6 Innovation Sciences alleges that Amazon directly  
7 infringes claims 22, 24, 39, 62, 64, 67, 80, 105, and 108 of  
8 the '983 patent, as well as claim 28 of the '918 patent, and  
9 claims 5, 6, and 52 of the '798 patent.

10 Amazon -- or excuse me -- Innovation Sciences alleges  
11 that Amazon's Fire TV Gen 3, Fire TV Stick Gen 2, Fire TV  
12 Stick 4K, and Fire TV Cube products infringe claims 22, 24,  
13 39, 62, and 67 of the '983 patent, and claim 28 of the  
14 '918 patent, and claims 5 and 6 of the '798 patent.

15 Innovation Sciences also alleges that Amazon's  
16 Fire HD 6, Fire HD 7, Fire HD 8.9, Fire HD 8, Fire HD 10  
17 products infringe claims 22, 24, 39, 62, and 67 of the  
18 '983 patent, and as well as claim 28 of the '918 patent, and  
19 claims 6 and 52 of the '798 patent.

20 Innovation Sciences also alleges that Amazon's Echo  
21 Gen 1, Echo Gen 2, Echo Dot Gen 1, Echo Dot Gen 2, Echo Dot  
22 Gen 3, Echo Dot Kids, Echo Plus Gen 1, Echo Plus Gen 2, Echo  
23 Spot, Echo Show Gen 1, Echo Show Gen 2, and Echo Tap -- Tap  
24 infringe only claims 22, 24, 39, 62, 64, and 80 of the '983.

25 Innovation Sciences alleges that Amazon's Alexa Voice

1 Service and Amazon Cloud infringes claims 105 and 108 of the  
2 '983 patent and claims 5 and 52 of the '798 patent.

3       You must determine separately for each asserted claim  
4 and each accused product whether or not there is  
5 infringement. There is not one exception -- there is one  
6 exception to this rule. If you find that a claim to which a  
7 dependent claim refers is not infringed, there cannot --  
8 there cannot be infringement of that dependent claim. On  
9 the other hand, if you find that the independent claim has  
10 been infringed, you must still decide, separately, whether  
11 the product meets the additional requirements of the  
12 asserted claims that depend from the independent claim,  
13 thus, whether those claims have also been infringed. A  
14 dependent claim includes all the requirements of any claims  
15 to which it refers, plus additional requirements of its own.

16       A claim limitation is met if it exists in the accused  
17 product as it is described in the claim language, either as  
18 I have explained that language to you, or if I did not  
19 explain it to you, as it would be understood by one of  
20 ordinary skill in the art.

21       Direct infringement of a system claim occurs if a  
22 single party makes or uses the system as a whole.  
23 Innovation Sciences contends that Amazon has made the  
24 accused systems. To prevail on this assertion, Innovation  
25 Sciences must prove that Amazon combined all of the claim

1 elements into an operable system.

2 Innovation Sciences also contends that Amazon has used  
3 the accused products as a whole. To prevail on this  
4 assertion, Innovation Sciences must prove that Amazon placed  
5 the system as a whole into service and that Amazon made the  
6 system work for its patented purpose. This can -- this is  
7 be shown by evidence demonstrating that Amazon controlled  
8 the system as a whole and obtained a benefit from it.

9 Indirect infringement.

10 Innovation Sciences alleges that Amazon is liable for  
11 infringement by actively inducing others to directly  
12 infringe the asserted claims of the asserted patents. A  
13 party induces patent infringement if it purposefully causes,  
14 urges, or encourages others -- or another to infringe the  
15 claims of the patent.

16 Inducing infringement cannot occur unintentionally.  
17 This is different from direct infringement, which could  
18 occur unintentionally.

19 As with direct infringement, you must decide whether  
20 there has been active inducement on a claim-by-claim and  
21 product-by-product basis. To prove that Amazon induced  
22 patent infringement, Innovation Sciences must prove by a  
23 preponderance of the evidence that:

24 One, the acts that are actually carried out by users of  
25 the accused products directly infringe an asserted claim.



1 Two, Amazon took action during the time the patent was  
2 in force that was intended to cause and led to the  
3 infringing acts by users of the accused products.

4 And, three, Amazon was aware of the patent and knew  
5 that the acts, if taken, would constitute infringement of  
6 that patent or that Amazon believed there was a high  
7 probability that the acts by the users of the accused Amazon  
8 product would infringe the patent and took deliberate steps  
9 to avoid learning of that infringement.

10 In order to establish active inducement of  
11 infringement, it is not sufficient that the end user it --  
12 itself directly infringes the claim, nor is it sufficient  
13 that Amazon was aware of the acts by the end user that  
14 allegedly constitute a direct infringement. Rather, you  
15 must find that Amazon specifically intended the end user to  
16 infringe the patent or that Amazon believed there was a high  
17 probability that the users of the accused Amazon products  
18 would infringe the patent but deliberately avoided  
19 hearing -- or avoided learning the infringing nature of the  
20 acts of users of the Amazon products and services.

21 Indirect infringement.

22 Innovation Sciences alleges that Amazon is liable for  
23 contributory infringement by contributing to the direct  
24 infringement by an end user of the asserted claims of the  
25 asserted patents. As with direct infringement, you must

1 determine contributory -- contributory infringement on a  
2 claim-by-claim basis.

3 Amazon is liable for contributory infringement of a  
4 claim if Innovation Sciences proves by a preponderance of  
5 the evidence all of the following requirements:

6 One, Amazon sells, offers to sell, or imports within  
7 the United States a component of a product or apparatus for  
8 use in a process, during the time the asserted patent is in  
9 force.

10 Second, the component or apparatus is not a staple  
11 article or commodity of commerce -- commerce suitable for  
12 substantial non-infringing use.

13 Three, the component or apparatus constitutes a  
14 material part of the invention.

15 Four, Amazon is aware of the asserted patents and knows  
16 that the component or apparatus is especially made or  
17 adapted for use as an infringement of the claim.

18 And, five, that the use of the product carried out by  
19 an end user directly infringes the claim.

20 Now, in this case Innovation Sciences argues that  
21 Amazon willfully infringed Innovation Sciences' patents. If  
22 you have decided that Amazon has infringed, you must also go  
23 on and address the additional issue of whether or not the  
24 infringement was willful.

25 Willfulness requires you to determine whether

1 Innovation Sciences proved that it is more likely than not  
2 that Amazon knew of Innovation Sciences' patents and that  
3 the infringement by Amazon was intentional. You may not  
4 determine that the infringement was willful just because  
5 Amazon was aware of the asserted patents and infringed one  
6 or more of them. Instead, willful infringement is reserved  
7 for egregious behavior, such as where the infringement is  
8 willful, wanton, malicious, in bad faith, deliberate,  
9 consciously wrongful, flagrant or, indeed, a characteristic  
10 of a pirate.

11 To determine whether Amazon acted willfully, consider  
12 all the facts and assess Amazon's knowledge at the time of  
13 the challenged conduct. This may include, but is not  
14 limited to:

15 One, whether or not Amazon acted consistently with the  
16 standards of behavior for its industry.

17 Second, whether or not Amazon intentionally copied a  
18 product of Innovation Sciences that is covered by the  
19 '983 patent, the '918 patent, or the '798 patent.

20 Three, whether or not Amazon reasonably believed it did  
21 not infringe or that the patent was invalid.

22 Four, whether or not Amazon made a good-faith effort to  
23 avoid infringing the '983 patent, the '918 patent, or the  
24 '798 patent, for example, whether Amazon attempted to design  
25 around the '983 patent, the '918 patent, or the '798 patent;

1 Or, five, whether or not Amazon tried to cover up the  
2 infringement.

3 Invalidity.

4 I will now instruct you on invalidity issues you should  
5 consider. An issued patent is accorded a presumption of  
6 validity based on a presumption that the United States  
7 Patent and Trademark Office, which you've heard referred to  
8 throughout this trial as the PTO or the Patent Office, acted  
9 correctly in issuing the patent.

10 This presumption of validity extends to all issued  
11 United States patents. In order to overcome this  
12 presumption, Amazon must establish by clear and convincing  
13 evidence that Plaintiff's patent or any claim in the patent  
14 is not valid; that is, you must be left with a clear  
15 conviction that the claims are invalid.

16 The time it took the United States Patent and Trademark  
17 Office to examine and grant the patents-in-suit is not  
18 relevant to any issue in this case. Even though the PTO  
19 Examiner has allowed the claims of the patent, you have the  
20 ultimate responsibility for deciding whether the claims of  
21 the patent are invalid.

22 Like infringement, invalidity is determined on a  
23 claim-by-claim basis. Claims are construed in the same way  
24 for determining infringement as for determining invalidity.  
25 You must apply the claim language consistently and in the

1 same manner for issues of infringement as for the issues of  
2 invalidity. You must determine separately for each claim  
3 whether that claim is invalid.

4 Now, at times you will hear me make references to prior  
5 art. In patent law a system, device, method, publication,  
6 or patent that predated the patent claim at issue is called  
7 "prior art."

8 You must determine whether disputed alleged prior art  
9 can be considered in determining whether claims of the  
10 asserted patents are anticipated or obvious. Prior art  
11 includes any of the following items:

12 One, any product that was publicly known or used by  
13 others in the United States before the patented invention  
14 was made.

15 Two, patents that issued more than one year before the  
16 filing date of the asserted patents or before the invention  
17 was made.

18 Three, publications, including foreign patent  
19 applications, having a date more than one year before the  
20 filing date of the asserted patents or before the invention  
21 was made.

22 Four, any product that was in public use or on sale in  
23 the United States more than one year before the asserted  
24 patents were filed.

25 And, five, any product that was made by anyone before

1 the named inventors created the patented product where the  
2 product was not abandoned, suppressed, or concealed.

3       Regardless of whether -- regardless whether the  
4 particular prior art references were considered by the PTO  
5 Examiner during the prosecution of the applications which  
6 matured into the asserted patents, Amazon must prove that  
7 the challenged claims are invalid. Amazon must do this by  
8 clear and convincing evidence. This burden of proof on  
9 Amazon never changes, regardless of whether or not the  
10 Examiner considered the reference.

11       Anticipation.

12       If an invention has been previously invented and  
13 disclosed to the public, then it is not new and, therefore,  
14 the claimed invention is anticipated by the prior invention.  
15 Simply put, the invention must be new to be entitled to  
16 patent protection under the U.S. patent laws.

17       To anticipate a claim, each and every element in the  
18 claim must be present in a single item of prior art and  
19 arranged or combined in the same way as recited in the  
20 claim. You may not combine two or more items of prior art  
21 to find anticipation.

22       In addition, to anticipate, a single item of prior art  
23 must enable one of ordinary skill in the art to make the  
24 invention without undue experimentation.

25       In determining whether every one of the elements of the

1 claimed invention is found in the prior art, you should take  
2 into account what a person of ordinary skill in the art  
3 would have understood from his or her review of the  
4 particular piece of art.

5 Anticipation must be determined on a claim-by-claim  
6 basis. Amazon must prove by clear and convincing evidence  
7 that all of the requirements of the claim are present in a  
8 single piece of prior art.

9 Obviousness.

10 Even though the invention may not have been identically  
11 disclosed or described before it was made by an inventor, in  
12 order to be patentable, the invention must also not have  
13 been obvious to a person of ordinary skill in the field of  
14 technology of the patent at the time the invention was made.

15 Amazon may establish that a patent claim is invalid by  
16 proving by clear and convincing evidence that the claimed  
17 invention would have been obvious to a person having  
18 ordinary skill in the art at the -- at the time the  
19 invention was made.

20 In determining whether a claimed invention is obvious,  
21 you must consider the level of ordinary skill in the field  
22 of the invention that someone would have had at the time the  
23 claimed invention was made, the scope of the content of the  
24 prior art, and any differences between the prior art and the  
25 claimed invention and, if present, so-called objective

1 evidence or secondary considerations, which I will describe  
2 shortly.

3 Do not use hindsight. Consider only what was known at  
4 the time of the invention.

5 Keep in mind that the existence of each and every  
6 element of the claimed invention in the prior art does not  
7 necessarily prove obviousness. Most, if not all, inventions  
8 rely on building blocks of prior art.

9 In considering whether a claimed invention is obvious,  
10 you should consider whether at the time of the claimed  
11 invention there was a reason that would have prompted a  
12 person having ordinary skill in the art to combine the known  
13 elements in the prior art in a way claimed -- the claimed  
14 invention does, taking into account such factors as, one,  
15 whether the claimed invention was merely the predictable  
16 result of using prior art elements according to their known  
17 functions; two, whether the claimed invention provides an  
18 obvious solution to a known problem in the relevant field;  
19 three, whether the prior art teaches or suggests the  
20 desirability of combining elements claimed in the invention;  
21 four, whether the prior art teaches away the combining  
22 elements in the claimed invention; five, whether it would  
23 have been obvious to try the combination of elements, such  
24 as when there's a design need or market pressure to solve a  
25 problem and there are a finite number of identified



1 predictable solutions.

2 To find it's -- it rendered the invention obvious, you  
3 must find that the prior art provided a reasonable  
4 expectation of success. Obvious is -- to try is not --  
5 obvious is -- to try is not sufficient in unpredictable  
6 technologies.

7 In determining whether the claimed invention was  
8 obvious, consider each claim separately. Do not use  
9 hindsight, i.e., consider only what was known at the time of  
10 the invention. In making these assessments, you should take  
11 into account any objective evidence, sometimes called  
12 secondary considerations, that may have existed at the time  
13 of the invention and afterwards that may shed light on the  
14 obviousness or not of the claimed invention regarding:

15 Whether the products covered by the claim were  
16 commercially successful due to the merits of the claimed  
17 invention, parentheses, rather than the result of the design  
18 needs or market-pressure advertising or similar activities,  
19 close parentheses.

20 Whether the claimed invention satisfied a long-felt  
21 need.

22 Whether others tried and failed to make the claimed  
23 invention.

24 Whether others copied the claimed invention.

25 Whether there were changes or related technologies or

1 market needs contemporaneous with the claimed invention.

2 Whether the claimed invention achieved unexpected  
3 results.

4 Whether others in the field praised the claimed  
5 invention.

6 Whether persons having ordinary skill in the art of the  
7 invention expressed surprise or disbelief regarding the  
8 claimed invention.

9 Whether others sought or obtained rights to the patent  
10 from the patent holder; and

11 Whether the -- the inventor proceeded contrary to the  
12 accepted wisdom in the field.

13 For example, if products incorporating the invention  
14 were commercially successful as a result of the claimed  
15 invention, then that may suggest that the invention was not  
16 obvious. If you find that the claimed invention satisfied a  
17 long-felt but previously unresolved need, that may also  
18 suggest the invention was nonobvious.

19 On the other hand, if you find that someone else came  
20 up with the claimed invention before or around the same time  
21 that the inventor thought of it, this may suggest the  
22 claimed invention was obvious.

23 Finally, acceptance of the claimed invention by others  
24 by licensing of the claimed invention may also show that the  
25 claimed invention was not obvious.

1           These factors are relevant only if there is a  
2 connection, or nexus, between the factor and -- and the  
3 invention covered by the claim term -- by the patent claim,  
4 excuse me. If you conclude that some of the above  
5 indicators have been established, those factors should be  
6 considered along with all other evidence in this case in  
7 determining whether Amazon has proven that the claimed  
8 invention would have been obvious.

9           Keep in mind that these factors relate to  
10 obviousness -- obviousness only, not anticipation.

11           Patent ineligibility.

12           To succeed on its claims for patent ineligibility,  
13 Amazon must show by clear and convincing evidence --

14           Sorry about that. I don't know why it rings on my  
15 iPad, but it's on silent. Okay. Let me start that sentence  
16 again.

17           To succeed on its claims for patent ineligibility,  
18 Amazon must prove by clear and convincing evidence that the  
19 elements of the asserted claims, when taken individually or  
20 when taken as an ordered combination, involve only  
21 technology which a person of ordinary skill in the art would  
22 have considered as to being well-understood, routine, and  
23 conventional as of August 10th, 2006, which is the priority  
24 date of the asserted patents.

25           Whether a particular technology was well-understood,

1 routine, and conventional goes beyond what is known in the  
2 prior art. The mere fact that someone is disclosed in a  
3 piece of prior art does not mean it is well-understood,  
4 routine, and conventional.

5 At the same time, the specification of the asserted  
6 patents may be such evidence if you find that the  
7 specification shows that the elements of the asserted  
8 claims, when taken individually or when taken as -- as an  
9 ordered combination, involve only technology which a person  
10 of ordinary skill in the art would have considered  
11 well-understood, routine, and conventional.

12 Now, the patent law also contains certain requirements  
13 for the part of the patent called the specification. The  
14 written specification -- or the written description  
15 requirement is designed to ensure that the inventor was in  
16 possession of the full scope of the claimed invention as of  
17 the patent's effective filing date.

18 Amazon contends that the claims of -- of Innovation  
19 Sciences' patents are invalid because their shared  
20 specification does not show by clear and convincing evidence  
21 that a person having ordinary skill in the field reading the  
22 patent specification as of the patents' effective filing  
23 date, which in this case is the August 10th, 2006  
24 Application Number 11/501,747, or February 2nd, 2007,  
25 Provisional Application Number 60/899,037, would not have

1 been recognized that -- would not have recognized that it  
2 describes the full scope of the invention as it is finally  
3 claimed in the asserted claims of the asserted patents. If  
4 a patent claim lacks adequate written description, it is  
5 invalid.

6 In deciding whether the patents satisfy this written  
7 description requirement, you must consider the description  
8 from the viewpoint of a person -- of a person having  
9 ordinary skill in the field of the technology of the patents  
10 as of their effective filing dates.

11 The specification must describe the full scope of the  
12 claimed invention, including each element thereof, either  
13 expressly or inherently.

14 A claimed element -- a claimed element is disclosed  
15 inherently if a person having ordinary skill in the field as  
16 of the effective date would have understood that the element  
17 is necessarily present in what the specification closes --  
18 specification discloses. It is not sufficient that the  
19 specification disclose only enough to make the claimed  
20 invention obvious to a person having ordinary skill.

21 The written description does not have to be in the  
22 exact words of the claim. The requirement may be satisfied  
23 by any combination of the words, structures, figures,  
24 diagrams, formulas, et cetera, contained in the patent  
25 specification. Adequate written description does not

1 require either examples or the actual reduction to practice  
2 of the claimed inventions. However, a mere wish or plan for  
3 obtaining the claimed invention is not adequate written  
4 description. Rather, the level of disclosure required  
5 depends on a variety of factors, such as the existing  
6 knowledge in the particular field, the extent and content of  
7 the prior art, the maturity of the science or technology,  
8 and other considerations appropriate in the subject matter.

9 It is not improper for a patent owner to amend or  
10 insert claims in a patent application for the purpose of  
11 obtaining a right to exclude a known commercial product from  
12 the market. However, if those claims were not adequately  
13 disclosed in the earlier applications, then those claims may  
14 no longer predate the competitor's products.

15 Now, if you find that Amazon infringed any valid claim  
16 of the asserted patents, you must then consider what amount  
17 of damages to award to Innovation Sciences.

18 Innovation Sciences must prove each element of its  
19 damages, including the amount of the damages, by a  
20 preponderance of the evidence. If proven by Innovation  
21 Sciences, damages must be an adequate -- an amount adequate  
22 to compensate for the entire infringement.

23 The purpose of a damage award is to put Innovation  
24 Sciences in about the same financial position it would have  
25 been if the infringement had not happened at all. But the

1 damage award cannot be less than a reasonable royalty. You  
2 may not add anything to the amount of damages to punish an  
3 accused infringer or to set an example.

4 The fact that I am instructing you on damages does not  
5 mean the Court believes that one party or the other should  
6 win the case. My instructions about damages are for your  
7 guidance only in the event you find in favor of Innovation  
8 Sciences. You will need to decide the issue of damages only  
9 if you find that one or more of the asserted claims are both  
10 valid and infringed.

11 In determining the amount of damages, you must  
12 determine when the damages began. Damages commence on the  
13 date that Amazon has both -- has both infringed and been  
14 notified of the alleged infringement of the '798, '918, and  
15 the '983 patents. Innovation Sciences and Amazon agree that  
16 these dates are as follows:

17 For the '798 patent, July 5th, 2018.

18 For the '918 patent, August 8th, 2017.

19 And for the '983 patent, July 5th, 2018.

20 A royalty is a payment made to a patent holder in  
21 exchange for the right to make, use, or sell the claimed  
22 invention. A reasonable royalty is the amount of royalty  
23 payment that a patent holder and the alleged infringer would  
24 have agreed to in a hypothetical negotiation taking place at  
25 a time prior to when the infringement first began.

1 In considering this hypothetical negotiation, you  
2 should focus on what the expectations of the patent holder  
3 and the alleged infringer would have been had they entered  
4 into an agreement at that time and had they acted reasonably  
5 in their negotiations.

6 In determining this, you must assume that both parties  
7 believed the patent was valid and infringed and that both  
8 parties were willing to enter into an agreement. The  
9 reasonable royalty you determine must be a royalty that  
10 would have resulted from the hypothetical negotiation and  
11 not simply a royalty either party would have preferred.

12 Evidence of things that happened after the infringement  
13 first began can be considered in evaluating the reasonable  
14 royalty only to the extent that the evidence aids in  
15 assessing what royalty would have resulted from a  
16 hypothetical negotiation just prior to the first  
17 infringement.

18 The amount you find as damages must be based on the  
19 value attributable to the patented technology, as distinct  
20 from the other, unpatented features of the accused products.  
21 In other words, you must determine the appropriate royalty  
22 that reflects the value attributable to the patented  
23 invention alone.

24 In determining the reasonable royalty, you should  
25 consider all the facts known and available to the parties at



1 the time the infringement began. Some of the kinds of  
2 factors that you may consider in making your determination  
3 are:

4 One, the value that the claimed invention contributes  
5 to the accused product.

6 Two, the value that factors other than the claimed  
7 invention contribute to Amazon's accused products and  
8 services; and

9 Three, comparable license agreements or other  
10 transactions, such as those covering the use of the claimed  
11 invention or similar technology.

12 No one factor is dispositive, and you can -- you can  
13 and should consider the evidence that has been presented to  
14 you in this case on each of these factors. You may also  
15 consider any other factors which in your mind would have  
16 increased or decreased the royalty the alleged infringer  
17 would have been willing to pay and the patent holder would  
18 have been willing to accept, acting as normally prudent  
19 business people.

20 Now, you have heard throughout the trial references to  
21 whether the reasonable royalty should be a running royalty  
22 or a lump sum. If you find that Innovation Sciences is  
23 entitled to damages, you must decide whether the parties  
24 would have agreed to a running royalty or a fully paid-up  
25 lump-sum royalty at the time of the hypothetical

1 negotiation.

2 A reasonable royalty can be paid either in the form of  
3 a one-time lump-sum payment or as a running royalty. Either  
4 method is designed to compensate the patent holder based on  
5 the infringer's use of the patented technology. It is up to  
6 you, based on the evidence, to decide which type of royalty  
7 is appropriate in this case.

8 Reasonable royalty awards may also take the form of a  
9 lump-sum payment. A lump-sum payment is equal to the amount  
10 the alleged infringer would have paid at the time of the  
11 hypothetical negotiation for a license covering all of the  
12 sales of the licensed product, both past and future. When a  
13 lump sum is paid, the infringer pays a single price for the  
14 license covering both past and future infringing sales.

15 Reasonable royalty awards may also take the form of a  
16 running royalty based on the revenue from or the volume of  
17 sales of the licensed products. A running royalty can be  
18 calculated, for example, by multiplying a royalty base on a  
19 royalty rate or by multiplying the number of infringing  
20 products or product units sold by the royalty amount per  
21 unit.

22 Comparable license agreements are one factor that may  
23 inform your decision as to the proper amount and form of the  
24 reasonable royalty award, similar to the way in which the  
25 value of a house is determined relative to the comparable

1 houses sold in the same neighborhood.

2 Whether a license agreement is comparable to the  
3 license under a hypothetical license scenario depends on  
4 many factors, such as whether they involve comparable  
5 technologies, comparable economic circumstances, comparable  
6 structure, and comparable scope. If there are differences  
7 between a license agreement and the hypothetical license,  
8 you must take -- take those into account when you make your  
9 reasonable royalty determination.

10 The hypothetical license is deemed to be a voluntary  
11 agreement. When determining if a license agreement is  
12 comparable to the hypothetical license, you may consider  
13 whether the license agreement is between parties in a  
14 lawsuit and whether the license agreement was a settlement  
15 influenced by the desire to avoid further litigation.

16 Now, it is your duty to deliberate and to consult with  
17 one another in an effort to reach a verdict. Each of you  
18 must decide the case for yourself, but only after an  
19 impartial consideration of the evidence with your fellow  
20 jurors.

21 During your deliberations do not hesitate to reexamine  
22 your own opinions and change your mind if you're convinced  
23 that you were wrong. But do not give up your honest beliefs  
24 because other jurors think differently or just to finish the  
25 case.

1 Remember at all times, you are the judges of the facts.  
2 You have been allowed to take notes during the trial. Any  
3 notes you have taken during the trial are only aids to your  
4 memory. If your memory -- memory differs from your notes,  
5 you should rely on your memory and not on the notes. The  
6 notes are not evidence. If you did not take notes, rely on  
7 your own independent recollection of the evidence, and do  
8 not be unduly influenced by the notes of other jurors.  
9 Notes are not entitled to any greater weight than the  
10 recollection or impression of each juror about the  
11 testimony.

12 Now, when you go to the jury room to begin your  
13 deliberations, you may take with you a copy of the charge,  
14 the exhibits that I have admitted into evidence, and your  
15 notes. You must select a jury foreperson to guide you in  
16 your deliberations and to speak for you here in the  
17 courtroom.

18 Your verdict must be unanimous. After you have reached  
19 a unanimous verdict, the jury foreperson must fill out the  
20 answers to the written questions on the verdict form and  
21 sign and date it. After you have concluded your service and  
22 I have discharged the jury, you are not required to talk  
23 with anyone about this case.

24 If you need to communicate with me during the  
25 deliberations, the jury foreperson should write the inquiry

1 and give it to the court security officer. After consulting  
2 with the attorneys, I will respond either in writing or by  
3 meeting with you in the courtroom.

4 Keep in mind, however, that you must never disclose to  
5 anyone, not even me, your numerical division on any  
6 questions.

7 And then, of course, before I say I'm going to send you  
8 to the jury room to begin deliberations, I've also attached  
9 page 31 through 35. I'm not going to read that. That is  
10 there for your aid. It's, again, a glossary of terms that  
11 are used in the patent -- in this patent trial, and also in  
12 the trial and throughout the -- the charge.

13 So, let me just give you a couple other things to go  
14 over. The questions that are going to be asked that have to  
15 be unanimous is called the Verdict of the Jury, and there's  
16 a series of questions. And like, for example, Question 1  
17 is: Has Innovation proved by a preponderance of the  
18 evidence that Amazon infringed any of the asserted claims?  
19 And Question 2 is about the invalidity question. You've  
20 seen those throughout the closing arguments, but you'll  
21 follow those instructions.

22 So, you will use your charge as you go through each of  
23 these questions to figure the answer out, as you decide  
24 that.

25 So, the first thing you're going to do when you go back

1 to the jury room -- well, of course, you can go ahead and  
2 eat lunch. Your lunch will be waiting there.

3 But second is you should decide who your foreperson  
4 will be. And, so, that will be Juror Note Number 1 you'll  
5 send back to the Court just saying Juror Number 1 through 8  
6 is the foreperson.

7 Then -- then you can begin your deliberations. You can  
8 have a working lunch. That's up to you if you want to start  
9 that while you're eating lunch.

10 One thing I will remind you is if you take a break or a  
11 juror has to go to the restroom, all deliberations must  
12 cease. All deliberations must happen while all eight of you  
13 are present.

14 So, I want to thank you -- oh, and then one last thing  
15 is I know it's later and we're taking a later lunch. So,  
16 the attorneys -- I'm going to let them go and take a lunch,  
17 too. So, if you ask a question in the next hour, it may  
18 take me a little bit longer to get back to you. So, I just  
19 want to under -- manage your expectations because I'm going  
20 to release them to go eat lunch for the next hour. That  
21 doesn't mean you can't start getting to work because your  
22 lunch is upstairs.

23 So, now I will go ahead and send you back to the jury  
24 room to begin your deliberations. I want to thank you for  
25 these last -- these past eight days. You've been so

1 attentive. You've had great questions. So, we really  
2 appreciate, both on behalf of the Plaintiff and the defense  
3 and on behalf of the Court, we thank you.

4 So, now I will send you back to the jury room to begin  
5 your deliberations. Thank you.

6 (Jury exits the courtroom, 1:29 p.m.)

7 THE COURT: Okay. So, I guess first, anything  
8 further from the Plaintiff or defense? And then we'll come  
9 back to the objections for the charge but --

10 MR. JACKSON: Nothing other than the objections that  
11 I'm aware of, Your Honor.

12 MS. SHAMILOV: We just still have that list of  
13 exhibits to read in the record.

14 THE COURT: Oh.

15 MS. SHAMILOV: Sorry, Your Honor.

16 THE COURT: I have -- I would say I hadn't forgotten  
17 about it, but I probably would have. So I'm -- I did remind  
18 you to remind me, and you did. So, why don't you go ahead and  
19 do that now before we do the objections.

20 These are the exhibits that are part of the record that  
21 were admitted by defense that we hadn't taken the time to  
22 actually list them in. So, go ahead.

23 MS. SHAMILOV: Thank you, Your Honor. Those exhibits  
24 are all defense exhibits: D1, 2, 3, 4, D74, D75, D79, D80,  
25 D90, D91, D92, D1179, D221, D260, D263, D265, D372.

1 THE COURT: Thank you.

2 MR. KRAUSS: I'm sorry. Can you tell me what you  
3 said --

4 THE COURT: I don't think your mic is on but...

5 MR. KRAUSS: I don't know if it's charged.

6 THE COURT: Well, it may have died. Just grab  
7 another one.

8 MR. KRAUSS: I was trying to follow along with the  
9 list, but there was something around between 92 maybe and 221.

10 MS. SHAMILOV: It was 221, 260, 263, 265, 372.

11 MR. KRAUSS: May I see your list? There was one that  
12 wasn't on my list that we discussed this morning.

13 MS. SHAMILOV: Yeah, of course. I'm sorry.

14 (Off-the-record discussion among  
15 (counsel.)

16 MR. KRAUSS: It's right, Your Honor. Thank you.

17 THE COURT: Okay. Very good.

18 Okay. So, objections to the charge? Of course, again,  
19 there has been no waiver. We waited until this point to  
20 make them, not to delay the starting of closing arguments.

21 MR. KRAUSS: Your Honor, objections to the charge.  
22 We have two, one with respect to the written description. It's  
23 Innovation's position that the charge that was given, that the  
24 written description requirement is designed to ensure that the  
25 inventor was in possession of the full scope of the claimed



1 invention as of the patent's effective filing date is an  
2 incorrect statement of the law, that the written description  
3 applies to the specification of the patent at issue and whether  
4 that patent specification supports the claim as is, without  
5 respect to the filing date.

6 Further, on patent ineligibility, we would like to  
7 preserve our objections with regard to submitting Question 3  
8 on patent eligibility for the reasons stated in Docket  
9 No. 781, page ID 55852 footnote 1. And because the question  
10 ignores the step wise nature of *Alice*, and -- as set forth  
11 in the *Alice* case, 870 -- I'm sorry, 573 U.S. 208.

12 Doing so forces the jury to answer the question of fact  
13 identified in *Berkheimer* at 881 F.3d 1367 to 68 in a vacuum  
14 without a finding that the invention was being directed to  
15 an abstract idea.

16 Without an articulation of the abstract idea, the jury  
17 will not know what they are comparing the something more or  
18 significantly more to.

19 THE COURT: Okay.

20 MR. KRAUSS: Thank you.

21 THE COURT: Okay. Those objections are overruled.

22 Defense has objections?

23 MR. RANGANATH: Thank you, Your Honor. I'm sorry. I  
24 don't have a lot of speaking experience in this courtroom so  
25 Amazon --

1 THE COURT: It's good to finally meet you. I've seen  
2 you -- heard you on the phone calls many times so...

3 MR. RANGANATH: And nice to talk to you, Your Honor.

4 So, Amazon objects to the instruction on -- first on  
5 inducement. There was no evidence in the record to support  
6 any claim of inducement, no expert testimony identifying a  
7 direct infringer corresponding to any inducing act, and no  
8 expert testimony on any inducing act.

9 Amazon objects to the instruction on contributory  
10 infringement as well on partially the same basis, no  
11 evidence of a single direct infringer, and no evidence of  
12 the lack of substantial non-infringing uses.

13 In the instruction given on contributory infringement,  
14 Amazon proposed that the jury be instructed to evaluate  
15 contributory infringement on a claim-by-claim and  
16 product-by-product basis, and understands the Court rejected  
17 that proposal, so we'll maintain our objection to that.

18 Amazon objects to the willfulness instruction the Court  
19 gave, and that is on pages 16 and 17 of the instructions.

20 And if the Court will indulge, I'd be happy to read  
21 Amazon's proposed willfulness instruction, which the Court,  
22 I believe, rejected, unless the Court has a different  
23 preference.

24 THE COURT: It's your show right now, so say whatever  
25 you want to say.

1 MR. RANGANATH: Okay. And, so, the instruction  
2 Amazon proposes and believes is appropriate is as follows: In  
3 this case Innovation Sciences argues that Amazon willfully  
4 infringed Innovation Sciences' patents. To prove willful  
5 infringement, Innovation Sciences must first persuade you that  
6 the -- that -- that Amazon infringed a valid claim of the  
7 asserted patents.

8 In addition, to prove willful infringement of a claim,  
9 Innovation Sciences must persuade you by a preponderance of  
10 the evidence that Amazon intentionally ignored or recklessly  
11 disregarded that claim. You must base your decision on  
12 Amazon's knowledge and action at the time of infringement.  
13 Evidence that Amazon had knowledge of the patent at the time  
14 of infringement, by itself, is not sufficient to show  
15 willfulness.

16 Instead, willful infringement is reserved for egregious  
17 behavior such as where the infringement is willful, wanton,  
18 malicious, in bad faith, deliberate, consciously wrongful,  
19 flagrant, or, indeed, characteristic of a pirate.

20 In deciding whether Amazon willfully infringed, you  
21 should consider all of the facts surrounding the  
22 infringement, including whether Amazon intentionally copied  
23 Innovation Sciences' patented technology in developing the  
24 accused products, whether Amazon knew or should have known  
25 that its conduct involved an unreasonable risk of

1 infringement, and whether Amazon had a reasonable belief  
2 that at the time of infringement, that its products did not  
3 infringe the asserted patents or that the patents were  
4 invalid.

5 I'd also like to add an objection to the willfulness  
6 instruction because there was no evidence in the record to  
7 support a claim of willfulness.

8 Amazon also objects to the -- to the instruction on  
9 invalidity, and I will read into the record Amazon's  
10 proposal on that.

11 So, the instruction on invalidity Amazon believes is  
12 appropriate is as follows: Patent invalidity is a defense  
13 to patent infringement. Even though the PTO Examiner has  
14 allowed the claims of a patent, you have the ultimate  
15 responsibility for deciding whether claims of the patents  
16 are valid. I will instruct you on the invalidity issues you  
17 should consider. As you consider these issues, remember  
18 that Amazon bears the burden of proving by clear and  
19 convincing evidence that the claims are invalid.

20 Amazon also objects to the Court's written description  
21 instruction. As the parties have briefed extensively, it is  
22 Amazon's position that the priority -- that the written  
23 description should be measured by the disclosure in the  
24 earliest claimed priority application, which in this case is  
25 only the August 10th, 2006 application to which Plaintiff

1 has consistently claimed priority throughout this case.

2 Amazon objects to the instruction -- to -- to a portion  
3 of the instruction at the conclusion of the written  
4 description section that it is -- that the instruction the  
5 Court read it is not proper for a patent owner to amend or  
6 insert claims in a patent application for the purposes of  
7 obtaining a right to exclude a known commercial product from  
8 the market. This instruction is unnecessary and  
9 prejudicial.

10 And, finally, Amazon objects to -- or Amazon would like  
11 to preserve an objection to a portion of the instruction in  
12 the definition of the reasonable royalty, and I'll read the  
13 proposed instruction, which I understand the Court rejected:

14 If you decide Innovation Sciences is entitled to a  
15 reasonable royalty, you must account for the relative value  
16 of the new and inventive elements of Innovation Sciences'  
17 invention in comparison to the conventional elements. In  
18 other words, you may reward Innovation Sciences only for its  
19 innovation, the incremental benefit bestowed by only the  
20 nonconventional or new elements of a patent claim taken as a  
21 whole.

22 And that's all I have, Your Honor. Thank you.

23 THE COURT: You did a great job. I'm still going to  
24 overrule the objections, but the presentation was great.

25 MR. RANGANATH: I'm disappointed, but I accept Your

1 Honor's ruling.

2 THE COURT: Probably not surprisingly. But you did a  
3 good job, so...

4 Okay. Anything else from either side then?

5 MS. SHAMILOV: I wanted to lodge the objections for  
6 the verdict form, too, Your Honor.

7 THE COURT: Go ahead.

8 MS. SHAMILOV: To preserve the objections there, if I  
9 may.

10 THE COURT: Go ahead.

11 MS. SHAMILOV: So, Amazon objects to  
12 Question Number 1, which is the question on infringement. It  
13 is a general question. It's improper for several reasons.  
14 There are three asserted patents here. The question does not  
15 break up the infringement by patents.

16 The jury instructions tell the jury that the  
17 infringement has to be determined on a claim-by-claim basis,  
18 yet the question does not ask for it. And in comparison to  
19 the invalidity question, Question Number 2, which breaks the  
20 patents and claims one by one, the two questions together  
21 become prejudicial to the defense and confusing to the jury  
22 in light of the jury instructions.

23 Question Number 3, Amazon preserves the objection to  
24 the introductory sentence there that the question -- that  
25 this question relates to patent eligibility and is unrelated

1 to Question 2, invalidity. Because the facts are common to  
2 the two questions, it's confusing to the jury that the two  
3 questions are unrelated when, in fact, they are not.

4 And then I'd like to preserve an objection with respect  
5 to Question Number 4A and 4B. Question 4B should have  
6 preceded Question 4A because the jury has to first determine  
7 whether damages are running royalty or lump sum before they  
8 can discuss the amount.

9 Thank you, Your Honor.

10 THE COURT: You're welcome.

11 I'll overrule those objections.

12 Anything else?

13 So, of course, I do like the attorneys to stay in the  
14 courthouse, but if you want to go and just be back by 2:30  
15 for -- you know, if you want to go eat lunch. I told them  
16 an hour, so the hour time we gave them.

17 And then we'll be in recess awaiting the jury's  
18 verdict.

19 (Recess, 1:42 p.m.)

20 (All parties present, 5:06 p.m.)

21 THE COURT: Let me just, for purposes of the record,  
22 any guesses who the foreperson is? That's Juror Note No. 1.  
23 Any guesses who the foreperson is? No guesses? No takers?  
24 Juror No. 1 is the foreperson.

25 MS. BLUE: Is it that one?

1 THE COURT: Yes.

2 MS. BLUE: The woman, the blonde?

3 THE COURT: Yes. Then Note No. 2 is we have reached  
4 a verdict.

5 So when the jury comes in, I'll have them hand the  
6 verdict to me and then I will publish the verdict, and  
7 I will also automatically poll the jury after I read the  
8 verdict to make sure it's unanimous.

9 And then do the attorneys have any interest in talking  
10 to the jury afterwards? I go talk to them first, and then  
11 if the attorneys have any interest -- I try to limit it to  
12 three per side, if we could, just because of the room. If  
13 you're interested in talking to the jury, just stay out in  
14 the hallway and I'll come get you after I talk to them.  
15 I will encourage it.

16 Okay. So let's bring the jury in.

17 (Jury seated in the jury box.)

18 THE COURT: Please be seated, except for Juror No. 1,  
19 the foreperson.

20 My understanding is y'all have reached a verdict?

21 JUROR: Yes, Your Honor.

22 THE COURT: Is it unanimous?

23 JUROR: Yes, Your Honor.

24 THE COURT: If you'll hand the verdict to the court  
25 security officer, and you can be seated, ma'am.



1 I'll read it here in a minute and then I'm going to  
2 publish it, and then I'm going to ask each of you if this is  
3 your verdict to make sure it's unanimous.

4 Okay. In Case 4:18CV474, Innovation Sciences, LLC  
5 versus Amazon.com, Inc., et al, Verdict of the Jury.

6 We, the jury, find as follows:

7 Question one, infringement: Has Innovation Sciences  
8 proved by a preponderance of the evidence that Amazon  
9 infringed any of the asserted claims? Answer: No.

10 Question two: Did Amazon prove by clear and convincing  
11 evidence that the following claims of the asserted patents  
12 are invalid? For the '983 patent, I'll just say they found  
13 yes for every claim. For the '918 also they found yes. And  
14 for the '978 they found yes for all three claims.

15 Question three, patent ineligibility: Did Amazon prove  
16 by clear and convincing evidence that when taken  
17 individually or when taken as an ordered combination, the  
18 following claims involve only technology which a person of  
19 ordinary skill in the art would have considered to be well  
20 understood, routine and conventional as of August 10th,  
21 2006? And for the '983 patent it was yes for all the  
22 claims. For the '918 also yes for claim 28, and for the  
23 '798, yes for all three of those.

24 Then, of course, Question 4A, 4B and 5 were not  
25 answered.

1 It's dated today and initialed by the foreperson.

2 So, Juror No. 1, is this your verdict?

3 JUROR: Yes, Your Honor.

4 THE COURT: Juror No. 2, is this your verdict?

5 JUROR: Yes, Your Honor.

6 THE COURT: Juror No. 3, is this your verdict?

7 JUROR: Yes, Your Honor.

8 THE COURT: Juror No. 4, is this your verdict?

9 JUROR: Yes, Your Honor.

10 THE COURT: Juror No. 5, is this your verdict?

11 JUROR: Yes, Your Honor.

12 THE COURT: Juror No. 6, is this your verdict?

13 JUROR: Yes, Your Honor.

14 THE COURT: Juror No. 7, is this your verdict?

15 JUROR: Yes, Your Honor.

16 THE COURT: Juror No. 8, is this your verdict?

17 JUROR: Yes, Your Honor.

18 THE COURT: Well, ladies and gentlemen, thank you.

19 I'll file your verdict as part of the record.

20 And I think as I said during the jury selection  
21 process, our system of justice as we know it and practice it  
22 would not exist without men and women being willing to serve  
23 their constitutional duties and serving as jurors on our  
24 cases. So on behalf of the United States and the Eastern  
25 District of Texas, I want to thank you again for your

1 service.

2 I'm going to release you back to the jury room. I want  
3 to come up and see if you have any questions. But, again,  
4 thank you again for your service.

5 (Jury exits the courtroom.)

6 THE COURT: Anything further from Plaintiff?

7 MR. JACKSON: Nothing, Your Honor.

8 THE COURT: Anything else for defense?

9 MR. DACUS: Nothing, Your Honor. Thank you.

10 THE COURT: Okay. Thank you. Then, again, if the  
11 attorneys want to just wait in the hallway if you want to talk  
12 to the jury, I will certainly encourage it. I've only had one  
13 jury say no, and it was in a criminal context. So I will go  
14 talk to them and see if they have any questions and then come  
15 down and get y'all probably.

16 So, again, thank y'all again for a very smooth trial  
17 and court will be in recess.

18 MS. BLUE: Do we wait in here?

19 THE COURT: Just wait in the hallway here.

20 Okay. We'll be in recess.  
21  
22  
23  
24  
25

I certify that the foregoing is a correct transcript from  
the record of proceedings in the above-entitled matter.

\_\_\_\_\_  
CHRISTINA L. BICKHAM

\_\_\_\_\_  
Date

\_\_\_\_\_  
JAN MASON

\_\_\_\_\_  
Date